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**The British state at the margins of empire:
extraterritoriality and governance in treaty port China,
1842-1927**

Alexander Thompson

A dissertation submitted to the University of Bristol in accordance with the requirements for award of the degree of Doctor of Philosophy in the Faculty of Arts, May 2018.

78,198 words

Abstract

Existing studies of British expansion in China have often limited their exploration of the role of the state mostly to diplomatic and military actions. This thesis provides the first comprehensive account and assessment of another important aspect of this expansion: the British state's role in implementing a project of governance over British subjects at the treaty ports. The fact of extraterritoriality – the principle that the nationals of foreign powers were subject to their own government's law rather than that of the state within the boundaries of which they were situated – is well known. But consular jurisdiction, the implementation in practice of the principle of extraterritoriality, has not been the subject of much research. This thesis describes the British state institutions and practices which were created to implement consular jurisdiction in China. It shows the factors that prompted and shaped the institutions and practices as they developed at the treaty ports, paying particular reference to the role played by the need to manage marginal British subjects, viewed as problem populations, in that process. It then demonstrates how the state's response to such groups shaped the development of the treaty ports, especially Shanghai, both by means of the formation of connections within the treaty ports and beyond, and also in the way that the state's actions had clear repercussions which shaped the nature of the treaty ports as distinctively colonial spaces. Previous studies of foreign involvement in the treaty ports, often working with the concept of informal empire, have overlooked the role of the British state in the development of colonialism in treaty port China, beyond diplomatic and military interventions. The thesis questions such approaches and suggests that it is essential to understand the role of the British state in any assessment of the nature and effects of colonialism in China.

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Author's Declaration

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Programmes and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

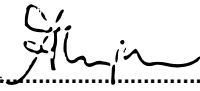
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Abbreviations

BaFSP	British and Foreign State Papers
BPP, HC	British Parliamentary Papers, House of Commons
BPP, HL	British Parliamentary Papers, House of Lords
SCC	Her Britannic Majesty's Supreme Court for China (and Japan)
FO	Foreign Office
HChT	Hertslet's China Treaties
HCoT	Hertslet's Commercial Treaties
NCH	<i>The North-China Herald</i>
NCDN	<i>The North-China Daily News</i>
OIC	Order in Council
SMC	Shanghai Municipal Council
SMP	Shanghai Municipal Police
TNA	The National Archives, Kew, UK

Glossary

Concession – a concession was an area of land leased from the Chinese government to a single foreign government, which adopted measures for the administration of the area. The foreign government sublet plots of land to its own nationals (and in addition, in some cases, to nationals of other countries). In the British case, concessions were governed by a municipal council of which the Chair was usually the local British consul. Important examples were the British concessions at Tianjin and Hankou.

Settlement – an area of land allocated by the Chinese government for foreign residence at an open port. In some cases, municipal councils were created by foreigners to administer settlements. The land in a settlement was not leased and then sublet by a foreign government (as it was in the case of concessions). Land was leased directly from Chinese landholders. The most prominent example was the International Settlement at Shanghai.

Treaty port – a place open to foreign trade according to treaty. Five ports were opened as a result of the 1842 Treaty of Nanjing – Fuzhou, Guangzhou, Ningbo, Shanghai and Xiamen – but dozens more were created in the following decades. The most important treaty ports were host to foreign concessions or settlements, but some treaty ports had no such area. Treaty ‘ports’ were not always sea- or river-ports, e.g. Gyantse in Tibet.

Chinese Geographical Names and Note on Romanisation

Chinese words in this thesis have been rendered using the *pinyin* system of writing Chinese with the roman alphabet, which is the standard used in the PRC and most academic writing.

Alternative romanisations of place names and geographical features mentioned in the text are given below in the Wade-Giles format, used in many older academic texts, as are common forms used in contemporary texts such as newspapers, where the latter usage differs (as it often did) from the Wade-Giles. Common

transliterations of Chinese place names given are often those formerly in use by the Chinese Post Office.

Pinyin/Chinese characters	Wade-Giles	Common form
Beijing 北京	Peiching	Peking
Fujian 福建	Fuchien	Fukien
Fuzhou 福州	Fuchou	Foochow
Guangzhou 广州	Kwangchou	Canton
Haikou haiko 海口	Haik'ou	Hoihow
Hankou 汉口	Hank'ou	Hankow
Hongkou 虹口	Hungk'ou	Hongkew
Huangpu 黄埔	Huangp'u	Whangpoo / Hwangpu
Jinan 济南	Chinan	Tsinan
Nanjing 南京	Nanching	Nanking
Ningbo 宁波	Ningpo	
Niuzhuang 牛庄	Niuchuang	Newchwang
Qingdao 青岛	Tsingtao	
Shanghai 上海	Shanghai	Shanghae
Shantou 汕头	Shant'ou	Swatow
Tianjin 天津	T'ienchin	Tientsin
Xiamen 厦门	Hsiamen	Amoy
Yangzi 扬子	Yangtzu	Yangtze / Yangtse
Yantai 烟台	Yant'ai	Chefoo
Zhenjiang 镇江	Chênchiang	Chinkiang
Zhoushan 舟山	Choushan	Chusan

Introduction

I am not the first who has been compelled to remark that it is more difficult to deal with our own countrymen at Canton, than with the Chinese government.¹ John Davis, 1846

John Francis Davis was Britain's leading official in China, the plenipotentiary and superintendent of trade, when he wrote these lines of complaint to Lord Palmerston, and was in the midst of a dispute surrounding heavy-handed and violent behaviour towards Chinese people in Guangzhou by British merchants.² Later superintendents and subordinate British officials would also expend significant amounts of time and energy on dealing with challenges that they saw as arising out of their commitment to control British subjects in China. Their attitudes and practices, and the policies and legal measures they adopted in dealing with these issues, influenced the shape of the British state's presence in China, and moreover had profound effects on the wider development of the Chinese treaty ports.

Some aspects and effects of Britain's intrusion into China in the nineteenth century are well known. We know much about the limitations placed on the Chinese government's sovereignty within its own borders through both legal treaties and the accretion of established practices – 'custom and usage' in Anglo-American legal parlance. We know that Chinese state control over parts of its territory was taken away, so that cities or portions of cities in China became effectively micro-colonies governed by foreigners. We know that China's state finances were taken to a large extent out of Chinese hands, and especially we know that under the principle of extraterritoriality, foreigners in China were removed from Chinese jurisdiction, in a clear degradation of Chinese sovereignty, as understood (both then and now) in western international law. We might characterise this process as one of the relentless erosion of the power of the Chinese state, of the removal of mechanisms

¹ Quoted in Hosea Ballou Morse, *The International Relations of the Chinese Empire. Vol. 1, The Period of Conflict, 1834-1860* (London, 1910), p. 384.

² The city of Guangzhou was referred to as Canton by foreigners at the time. See pages 8–9 for more information on the rendering of Chinese place names in western languages.

for order and control which are hallmarks of state power. This is an accurate picture, which has been painted in many ways by many different writers.³ But it gives a somewhat incomplete picture of foreign expansion in China, at least in the British case, if we fail to give serious consideration to the steps which were taken by the British state to put in place an apparatus for order and control – consular jurisdiction – over its subjects in China. This is a step which we must take if we are to understand the way that the treaty ports operated. This research interrogates for the first time the British state’s project of governance in China and connects it with the institutions, practices and culture which grew up in the Chinese treaty port world.⁴ As others have noted, this was a colonial world dominated by Britain, but the roles played by British officials, through regulations, institutions and everyday practices, in creating, shaping and perpetuating this world have remained largely unexplored.⁵

This thesis asks a number of linked questions concerning the British state in treaty port China. First of all, what was the nature of the British state institutions which were created to implement consular jurisdiction in China? What factors prompted and shaped British institutions and practices as they developed at the treaty ports?

³ See especially Robert Bickers, *The Scramble for China: Foreign Devils in the Qing Empire, 1832-1914* (London, 2011), Albert Feuerwerker, *The Foreign Establishment in China in the Early Twentieth Century* (Ann Arbor, 1976), James L Hevia, *English Lessons: The Pedagogy of Imperialism in Nineteenth-Century China* (Durham, N.C., 2003) and Jürgen Osterhammel, ‘Semi-Colonialism and Informal Empire in China: Towards a Framework of Analysis’, in W. Mommsen and J. Osterhammel, (eds.), *Imperialism and After: Continuities and Discontinuities* (London, 1986), 290–314.

⁴ Others have described aspects of the British state’s involvement in China, including certain institutions, but there is no existing work which aims to analyse the British state’s project of governance in China. See Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford, 2012); Emily Whewell, ‘British Extraterritoriality in China: the Legal System, Functions of Criminal Jurisdiction, and its Challenges, 1833-1943’, (unpublished PhD thesis, University of Leicester, 2015); P.D. Coates, *The China Consuls: British Consular Officers, 1843-1943* (Hong Kong, 1988); John King Fairbank, *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports, 1842-1854* (Stanford, Calif., 1953); Albert Feuerwerker, *The Foreign Establishment in China in the Early Twentieth Century* (Ann Arbor, 1976). Cassel and Whewell examine extraterritoriality and the courts, Coates and Fairbank both give a good deal of information about consuls, and Feuerwerker provides a valuable overview of the working of the Shanghai International Settlement within which Britain was dominant. However, none of these works provides a survey or detailed analysis of the British state’s project of governance as effected through the range of institutions and practices, and over the time period, encompassed by this thesis.

⁵ Jürgen Osterhammel, ‘Britain and China, 1842-1914’, in Andrew Porter and William Roger Louis (eds.), *The Oxford History of the British Empire: Volume 3, The Nineteenth Century* (Oxford, 1999), 146–69.

And what were the implications for the treaty ports as interconnected colonial cities, home to mobile foreign and Chinese populations, and linked both to the rest of China and other parts of the world, especially other parts of the British empire? These questions are answered by paying particular reference to the role played in these processes by the perceived need to manage certain groups of British subjects, viewed as marginal and problem populations by British officials. The focus on such groups is important, since it ensures that everyday practices are given due weight in the analysis of what the British state, through its agents, actually did in China. Thus not only official intentions as expressed in law and policy and overtly set out and pursued through legal instruments and proclamations are captured and analysed, but also practices involving official deviance from legality, disputes between official actors, and the creation of informal connections and ad hoc arrangements are all examined in order to write a more comprehensive institutional history.⁶

Summary of Arguments

This thesis examines the expansion of the British state in China which was undertaken to implement consular jurisdiction in China following the conclusion of the Treaty of Nanjing in 1842. It argues that the British state engaged in a substantial project of governance in China, and thus deployed resources towards a settled, institutional presence which has hitherto been only weakly acknowledged in the historical writing on Britain in China. It describes the structures and institutions developed to manage and control British subjects, especially marginal groups, and uncovers and evaluates the factors which lay behind official British attitudes and practices towards such groups, on which the attention of state actors was intensely focussed in the course of the British state's project of governance in treaty port China. It argues that the presence and activities of British subjects viewed by officials as problem populations shaped the institutions and practices of the British state in China by: triggering the establishment and enlargement of

⁶ In keeping in view what the state actually did, as well as its formal outlines, this work is inspired by the important contribution of Patrick Joyce to the history of the British state: Patrick Joyce, *The State of Freedom: A Social History of the British State Since 1800* (Cambridge, 2013).

institutions for their control; and prompting changes – both extensions and alterations – to connections and collaborations with other state and non-state agents and institutions in China and elsewhere in the British empire. It furthermore argues that the British state's actions in response to British problem populations played a significant role in the development of the treaty ports. An analysis of the actions of the state, and the effects of those actions, explains aspects of the development of the treaty ports and reveals their nature as distinctively colonial settings in new ways.

Historiographical Contexts

Foreign expansion into China in the treaty century (1842-1943), was complicated, and historians continue to grapple with the best way to understand various aspects of it. It was an extensive, influential, destructive, creative, exploitative and profitable set of processes, which has cast a long shadow in Chinese minds, especially in the Communist Party official view of China's modern history as written in China, particularly from the 1980s onwards, in which the 'unequal treaties' forced on China by foreign powers are very prominent.⁷ But despite its clear and obvious importance, it is hard to pin down the nature of foreign and British expansion in China conceptually, since on the one hand the situation in China does not fit in many ways alongside patterns seen in most examples of nineteenth-century European colonial expansion elsewhere in the world, yet on the other hand many features of the foreign presence, when examined carefully, look colonial from a historian's perspective, and have been shown clearly to have been experienced as colonial from the perspective of both foreign and Chinese contemporaries.⁸

A number of writers have turned to the concepts of 'informal empire' and the 'semi-colonial' to help to explain the case of treaty era China. These two terms are sometimes used interchangeably, although differences are discernable. The term 'informal empire' has grown out of British writing on imperial history and remains

⁷ Bickers, *The Scramble for China*, pp. 4-6; Feuerwerker, *The Foreign Establishment in China*, pp. 110-1.

⁸ Jurgen Osterhammel provides a useful (and extensive) list of foreign phenomena in China which could be classed as imperial in his 'Semi-Colonialism and Informal Empire in China: Towards a Framework of Analysis', in W. Mommsen and J. Osterhammel (eds.), *Imperialism and After: Continuities and Discontinuities* (London, 1986), 290-314, pp. 290- 1.

more influential in Britain than in the US and elsewhere.⁹ The concept developed out of a desire to explain British imperial expansion in the nineteenth century, and is still more likely to be used in such a context, implying a connection with a unitary empire (usually the British), whereas the deployment of the term semi-colonial fits less into explanatory models relating to modes of expansion, and instead moves the focus towards a description of particular sites of colonialism in a way that may allow for a comparison with other places where similar conditions have been noted.¹⁰ It is therefore less often deployed in works dealing with a particular imperial power's expansion in wider perspective. It has been used as part of the standard mainland Chinese definition of China's status in the treaty era, which is that China was 'semi-colonial and semi-feudal' (半殖民地半封建).¹¹

The term informal empire is generally used within a conceptual framework which posits two broad types of imperial expansion, drawing on the work of John Gallagher and Ronald Robinson, who suggested that the British state's approach to empire could be summarised as 'trade with informal control if possible; trade with rule when necessary'.¹² This theory has played a useful role in drawing the attention of imperial historians towards places which fell under varying degrees of external control without becoming formally politically subsumed within or attached to the imperial polity, including China.¹³ Although Robinson and Gallagher themselves argued that 'the difference between formal and informal empire has not been one of fundamental nature but of degree,' an awareness of this latter insight has not however always been evident in some subsequent work,

⁹ John Darwin is probably the leading exponent of the use of this term in this way today: see for example his *Unfinished Empire: The Global Expansion of Britain* (London, 2012), pp. 391-2.

¹⁰ For example, Bryan Goodman, 'Improvisations on a Semicolonial Theme, or, How to Read a Celebration of Transnational Urban Community', *The Journal of Asian Studies*, 59, 4 (2000), 889-926.

¹¹ Bryna Goodman and David S.G. Goodman, 'Introduction', in Bryna Goodman and David S.G. Goodman (eds.), *Twentieth Century Colonialism and China: Localities, the Everyday, and the World* (Abingdon, 2012), p. 4.

¹² John Gallagher and Ronald Robinson, 'The Imperialism of Free Trade', *Economic History Review*, New Series, 6, 1 (1953), 1-15, p. 13.

¹³ Historians who have made use of the theory of informal empire effectively to incorporate studies of China into the British empire world include especially Robert Bickers and Jürgen Osterhammel. See for example, Robert Bickers, *Britain in China: Community, Culture and Colonialism, 1900-49* (Manchester, 1999); Jürgen Osterhammel, 'Semi-Colonialism and Informal Empire in China: Towards a Framework of Analysis', in W. Mommsen and J. Osterhammel (eds.), *Imperialism and After: Continuities and Discontinuities* (London, 1986), 290-314.

so that 'informal' and 'formal' empire can appear as two clear and bounded categories, alternative modes of expansion with clear lines of distinction between them.¹⁴ In this kind of framework, informal empire is all too easily cast as necessarily a diminished or secondary variety of empire. Formal empire is seen as 'full' empire, whereas informal empire is a lightweight, perhaps even 'light touch' alternative. This is surely partly a result of the nature of the terms used, which are hard to divorce from their regular meanings in the English language, and because of the sense of binary opposition to which such a word pair naturally seems to push us.

It seems that the terminology of formal/informal empire can therefore sometimes steer us towards misleading assumptions about what kind of imperial formations existed in places such as China. For example, John Darwin sets out the contrast between formal and informal empire by describing the latter as 'nearly invisible', and stresses the importance of 'influence' in the exercise of control.¹⁵ Darwin applies the label of informal empire to China and yet the expansion of Britain – including the British state – into China in the treaty era can only have appeared invisible when viewed from selected points, such as within the walls of the Colonial Office in London; it was by no means invisible to the foreigners and Chinese living in or passing through the treaty ports.

This dualism has also appeared in more specialist work focussing specifically on China. For example, in their discussion of colonialism in China, David and Bryna Goodman describe places such as Hong Kong, Qingdao and Weihaiwei, as 'clearly colonized pieces of China, each of which was governed by a single colonial power', and contrast them with the treaty ports, which they call 'a more restricted type of colonial formation.'¹⁶ Clearly, differences in modes of governance should be recognised between kinds of colonised space, but the implication of the use of the term 'restricted' seems to be that the treaty ports, including even Shanghai,

¹⁴ A point made recently by Isabella Jackson in relation to China: see her *Shaping Modern Shanghai: Colonialism in China's Global City* (Cambridge, 2017), p. 17.

¹⁵ Darwin, *Unfinished Empire*, pp. 391-2.

¹⁶ Goodman and Goodman, 'Introduction', in Goodman and Goodman (eds.), *Twentieth Century Colonialism and China: Localities, the Everyday, and the World*, p. 2.

represented a type of more limited or less active colonialism, a position which is not supported by the evidence.¹⁷ To take the most stark example, why should Weihaiwei, in which under British rule traditional village hierarchies and legal procedures were maintained more or less intact, and in which Britain invested very little administrative labour or capital, be a less ‘restricted’ example of colonialism than the International Settlement of Shanghai, in which officials of foreign governments, especially Britain, together with the Shanghai Municipal Council (SMC), a large foreign administrative body, instituted procedures of governance which clearly replicated asymmetrical colonial relations in a wide range of areas and in ways which bore a close resemblance to sites of colonialism elsewhere in the world? If the crucial point of difference is that the Chinese residents of Weihaiwei, numbering around 160,000 in 1918, were placed under Britain’s sole authority, whereas the Shanghai International Settlement’s approximately 630,000 Chinese residents in 1916 were still nominally under the control of the Chinese government, this fixation on tracing sovereignty can distort our understanding of specific conditions, arrangements and their effects.¹⁸

In the existing literature on the foreign presence in China, the role of the British state has often been examined in limited ways as most historians have focused on its role in terms of actions, especially diplomatic and military, towards the governments of China and the other treaty powers, from the forcible opening of the Qing empire to trade in the nineteenth century, via the various crises of the last decades of the Qing dynasty, through to the turbulent years of republican China.¹⁹ The existence of extraterritoriality and consular jurisdiction in China is generally noted in such writing, but the workings of the system and the administrative role

¹⁷ Isabella Jackson argues forcefully for a recognition of Shanghai’s International Settlement as a fully-fledged site of colonial governance. Isabella Jackson, *Shaping Modern Shanghai: Colonialism in China’s Global City* (Cambridge, 2017).

¹⁸ For a study of British governance in Weihaiwei see Carol G.S. Tan, *British Rule in China: Law and Justice in Weihaiwei 1898-1930* (London, 2008). See also Pamela Atwell, *British Mandarins and Chinese Reformers: the British Administration of Weihaiwei (1898-1930) and the Territory’s Return to Chinese Rule* (Oxford, 1985).

¹⁹ A fairly comprehensive survey of such work up to 1990 can be found in Wang Gungwu, *Anglo-Chinese Encounters since 1800: War, Trade, Science, and Governance* (Cambridge, 2003). For more recent literature, see Bickers, *The Scramble for China*, and also his *Out of China*, the latter focussing on the post-First World War period. Robert Bickers, *Out of China: How the Chinese Ended the Era of Western Domination* (London, 2017).

played by the British state through its consuls and courts have not been explored in great detail. Emily Whewell's 2015 thesis is a recent exception, although by making criminal law under extraterritoriality (rather than governance more broadly) the focus of her attention, she gives only a partial picture of the project of governance which was effected by the British state through a range of institutions and collaborations with other bodies in China.²⁰ Published works which have looked in more detail at extraterritoriality in China have also tended to focus on the international relations aspect of this issue. So for example both Pär Cassel and R. Randle Edwards focus much of their attention on the process of negotiating the contours of extraterritoriality which took place between Chinese and foreign officials.²¹ However, relatively little research has been conducted which examines consular jurisdiction as it was in fact practised following the Opium War, and the implications of this practice for the treaty ports. This thesis addresses this omission by examining how, on the basis of extraterritoriality, the British state engaged in a project of governance in China through its involvement in the day to day ordering of British activities in China, in ways which strongly influenced treaty port life, principally through the British consuls and the courts which administered justice to British subjects and corporate bodies. It was not only British subjects whose lives were shaped by the attitudes and practices of agents of the British state in China. Chinese living in the Shanghai International Settlement lived for many practical purposes as though they were colonial subjects under foreign government, and I argue in this thesis that the British state played a substantial role in the ambitious and elaborate project of governance exercised over them there, albeit in concert with other foreign governments and the SMC.²² This aspect of Shanghai's governance has been largely overlooked, and this sidelining of the state in areas classified as informal empire or semi-colonial, which it is one aim of

²⁰ Emily Whewell, 'British Extraterritoriality in China: the Legal System, Functions of Criminal Jurisdiction, and its Challenges, 1833-1943'.

²¹ Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan*; R. Randle Edwards, 'Ch'ing Legal Jurisdiction Over Foreigners', in Jerome Alan Cohen, Fu-mei Chang, and R. Randle Edwards (eds.), *Essays on China's Legal Tradition* (Princeton, N.J., 1980), 222-269. See also Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, 2010).

²² Feuerwerker, *The Foreign Establishment in China*, p. 5.

this thesis to rectify, may represent a further side-effect of assumptions based around these frameworks.

Ann Laura Stoler has made a powerful critique of terms like 'informal empire' which she calls 'unhelpful euphemisms', and argues that instead we should think in terms of 'scaled genres of rule that produce and count on different degrees of sovereignty and gradations of rights'.²³ She prefers the expression 'imperial formations' to encapsulate all forms of empire, and thus advocates a more flexible framework which could help avoid the problems discussed above. Other scholars, some working in the field of Chinese history, have also advocated moving away from the use of multiple terms to particularise forms of empire. James Hevia, for example, proposes that we think of 'all the entities produced in the age of empire as forms of semicolonialism', a formulation which may at first appear perplexing, but which would in fact allow us to acknowledge that colonialism, however initiated or described in legal and political or administrative terms, was never a completed project, and was always a complex set of relations which need to be analysed as they unfolded in everyday life as much as in the lives of imperial and local leaders.²⁴ Isabella Jackson argues for the uniqueness of Shanghai, and advocates the description 'transnational colonialism' to fit the specific case of the Shanghai International Settlement, emphasising the variety of nations and nationalities involved in governance of the Settlement.²⁵ The obvious counter-criticism to such moves is that without analytical tools to classify broader categories of empire or colonialism, the ability to make comparisons and draw conclusions on a larger scale becomes very difficult. But if the tools used to distinguish lead to distortions such as those outlined above, we may be better off seeing the situation as too nuanced and complex to allow for the development of straightforward categories or shorthands.²⁶ My own view is that informal empire

²³ Ann Laura Stoler, 'On Degrees of Imperial Sovereignty', *Public Culture*, 18, 1 (2006), 125–46, pp.136, 128.

²⁴ James L. Hevia, *English Lessons: The Pedagogy of Imperialism in Nineteenth-Century China* (Durham, N.C., 2003), p. 26.

²⁵ Isabella Jackson, *Shaping Modern Shanghai: Colonialism in China's Global City*, p. 6.

²⁶ John Comaroff has made a similar argument against distorting generalisations of the colonial state: John L Comaroff, 'Reflections on the Colonial State, in South Africa and Elsewhere: Factions, Fragments, Facts and Fictions', *Social Identities*, 4, 3 (1998), 321–61, p. 336.

may have been useful in metropole-oriented studies seeking to understand the various modes of expansion of a particular empire, and in drawing attention to expansion not definable in terms of the transfer of specifically demarcated territory, but it does not particularly assist, and may in fact be unhelpful to, scholars whose primary aim is to explain, in Alan Lester's words, 'the nature of colonial relations in any one or more places, and how those relations shape those places.'²⁷ Instead of making sovereignty over territory the starting point and key to the defining framework of histories of empire, a focus on colonial relations, and the colonial practices which establish and perpetuate them, can avoid the blind spots created by the older models discussed above.

There has been an increasing move over recent years towards the production of work which has developed our understanding of colonial relations at the treaty ports, especially Shanghai. A focus on the culture of the colonisers at the treaty ports has provided a clearer understanding of the nature and effects of foreign expansion in China. Robert Bickers has led the way in this area, complicating our notion of who British colonisers were in China, including the things which divided and united them. Both he and Eileen Scully have shown the way in which divisions were present between official and unofficial foreigners in the twentieth century, as national, local and individual foreign priorities often came into conflict.²⁸ Particular attention has also been given to some marginal groups within the foreign colonising population at the treaty ports, showing the complexity of treaty port society and its connections with manifestations of empire elsewhere.²⁹ Robert Bickers' work in particular has shown how through colonial culture at the treaty ports, even marginal Britons were socialised as colonisers, a process which fed into the reproduction of colonial relations in China in particular ways. This current of research on marginal colonisers in China has been produced in dialogue

²⁷ Alan Lester, 'Imperial Circuits and Networks: Geographies of the British Empire', *History Compass*, 4, 1 (2006), 124–41.

²⁸ Bickers, Britain in China; Eileen P. Scully, *Bargaining with the State from Afar: American Citizenship in Treaty Port China, 1844-1942* (New York, 2001).

²⁹ Robert Bickers, *Empire Made Me: An Englishman Adrift in Shanghai* (London, 2003); Isabella Jackson, 'The Raj on Nanjing Road: Sikh Policemen in Treaty-Port Shanghai', *Modern Asian Studies*, 46, 6 (2012), 1672–704; Eileen P. Scully, 'Prostitution as Privilege: The "American Girl" of Treaty-Port Shanghai, 1860-1937', *The International History Review*, 20, 4 (1998), 855–83.

with a growing body of work on other imperial settings, especially India, in which the status of the colonisers as a diverse group has been described and analysed.³⁰ Writers have examined the problems which marginal Britons, including vagrants, violent planters and barmaids presented to colonial authorities, and have noted the importance of the dilemmas posed to colonial élites by such people in gaining a deep understanding of notions and practices around colonial taxonomies, hierarchies and boundaries. This attention to the relationship between marginal colonisers and state authorities is however largely missing in the work on marginal colonisers in China, a deficit which this research seeks to remedy, and in so doing, show the influence that such relationships had on the treaty ports.

In focussing on the British state and its management of marginal populations, this thesis explores the operation of colonial relations in China. It does so on the basis that the 'politics of difference', which Frederick Cooper and Jane Burbank see as a central and universal practice of empires, helps to explain British colonial practice in China.³¹ This thesis therefore engages with the literature on management of difference, and tensions surrounding the boundaries between colonisers and colonised, themes which have been central to a good deal of historical writing in recent years.³² Not all writers on empire agree with this emphasis on the importance of difference, for example John Darwin has questioned the centrality or at least the usefulness of difference as a concept to understand empire, pointing to

³⁰ David Arnold, 'European Orphans and Vagrants in India in the Nineteenth Century,' *The Journal of Imperial and Commonwealth History*, 7, 2 (1979), 104–27; Ashwini Tambe and Fischer-Tiné Harald (eds.), *The Limits of British Colonial Control in South Asia: Spaces of Disorder in the Indian Ocean Region*, (Abingdon, 2008); Harald Fischer-Tiné, *Low and Licentious Europeans: Race, Class, and 'White Subalternity' in Colonial India* (New Delhi, 2009); Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge, 2010); Will Jackson, *Madness and Marginality: The Lives of Kenya's White Insane* (Manchester, 2013); Ashley Wright, 'Maintaining the Bar: Regulating European Barmaids in Colonial Calcutta and Rangoon,' *The Journal of Imperial and Commonwealth History*, 45, 1 (2017), 22–45.

³¹ Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton, N.J., 2010). See especially pp. 11–13. Catherine Hall uses the term 'colonial governmentality' to describe a similar phenomenon: Catherine Hall (ed.), *Cultures of Empire: Colonizers in Britain and the Empire in the Nineteenth Century* (Manchester, 2000), p. 7.

³² See for example Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton, N.J., 1993); Frederick Cooper and Ann Laura Stoler (eds.), *Tensions of Empire: Colonial Cultures in a Bourgeois World* (Berkeley, Calif., 1997); Nicholas Thomas, *Colonialism's Culture: Anthropology, Travel and Government* (Cambridge, 1994); Thomas Kuehn, *Empire, Islam, and Politics of Difference: Ottoman Rule in Yemen, 1849–1919* (Leiden, 2011); Harald Fischer-Tiné and Susanne Gehrman (eds.), *Empires and Boundaries: Race, Class, and Gender in Colonial Settings* (Abingdon, 2009).

the equal importance of difference in the ordering of many nation states.³³ There is no doubt, however, that states (imperial or otherwise) grappled with incorporation and differentiation, and distinction and hierarchy, in particular ways which were dependent on factors varying across different spatial and temporal contexts. George Steinmetz provides a clear theoretical argument which justifies a focus on difference for historians interested in explaining the practices of states in managing empires, and which explains the variation which empirical studies have unearthed:

Nor were variations in overseas colonial practices simply a response to real economic, social, ecological, or cultural conditions on the ground. Instead, modern overseas colonial practices flowed partly from colonizers' racial/ethnographic preconceptions of the people they were colonizing.³⁴

In this way, approaches which take colonial cultures seriously, in particular as they relate to the politics of difference, can help to explain colonial practices. This thesis complements such work by using underexplored archival sources to examine the attitudes and practices of British officials in China, in order to understand the divergences and similarities between British colonial practice towards a variety of groups, especially British 'problem populations' – marginal colonisers in China who included violent Europeans, ethnic Chinese British subjects, Eurasians and Indians – in the Chinese treaty ports.

One thing which most members of these groups had in common, and which heightened official anxieties surrounding them, was their propensity towards mobility across and between imperial (and non-imperial) spaces. Empire, including British expansion in China, depended on the movement of people of all statuses. But mobility could also be threatening and destabilizing from an élite perspective.³⁵ The degree to which imperial governance was an exercise in managing mobility has been increasingly recognised by historians of empire as

³³ John Darwin, 'Empires in World History: Power and the Politics of Difference, by Jane Burbank and Frederick Cooper,' (book review) *The English Historical Review* 127, no. 525 (2012): 515–518.

³⁴ George Steinmetz, 'Return to Empire: The New U.S. Imperialism in Comparative Historical Perspective', *Sociological Theory*, 23, 4 (2005), 339–67, p. 341.

³⁵ See Robert Bickers, *Empire Made Me*, for details of the movement of one marginal group to China, white men who were brought to Shanghai to work as police. For migration in the British Empire more generally, see Marjory Harper and Stephen Constantine, *Migration and Empire* (Oxford, 2010).

worthy of further attention. Ashley Wright, in a recent article on a mobile marginal group, European barmaids in India, describes a population which drew a considerable degree of attention from colonial authorities, despite its small numbers. She shows how the authorities sought to intervene in attempts by such women to access colonial opportunities, by regulating the kinds of employment open to them.³⁶ Similarly, Thomas Metcalf has shown how colonial authorities attempted to restrict the roles open to Indian migrants in accordance with race-based preconceptions about the suitability of different 'types' of Indians for different tasks.³⁷ This thesis will build on these findings and will examine how both marginal British subjects themselves, especially 'martial' Indians, and ideas held by British élites about such people, circulated to the treaty ports, and how these movements affected colonial relations in that context. By showing also that British expansion in treaty port China was influenced by imperial forces from other parts of British imperial networks, this thesis contributes to existing work which decentres the British empire by moving the focus away from a dyadic metropole/colony view of imperial connections, and which shows that the British empire was multipolar in nature in ways which affected the exercise of governance.³⁸

A focus on mobile populations is inevitably also a focus on networks and connections, since the movement of people cannot be disentangled from the flows of goods, capital and especially information and ideas which constituted imperial circuits. This thesis will engage with recent work on imperial connections which moves beyond a narrow focus on particular circulatory processes, such as trade in goods or migrations of people.³⁹ Alan Lester suggests that a broader use of the

³⁶ Ashley Wright, 'Maintaining the Bar: Regulating European Barmaids in Colonial Calcutta and Rangoon', *The Journal of Imperial and Commonwealth History*, 45, 1 (2017), 22–45.

³⁷ Thomas R. Metcalf, *Imperial Connections: India in the Indian Ocean Arena, 1860-1920* (Berkeley, Calif., 2008).

³⁸ Examples include: David Lambert and Alan Lester (eds.), *Colonial Lives across the British Empire: Imperial Careering in the Long Nineteenth Century* (Cambridge, 2006); Tony Ballantyne, *Between Colonialism and Diaspora: Sikh Cultural Formations in an Imperial World* (Durham, N.C., 2006); Kevin Grant, Philippa Levine, and Frank Trentmann (eds.), *Beyond Sovereignty: Britain, Empire, and Transnationalism, c. 1880-1950* (Basingstoke, 2007).

³⁹ A large literature has emerged which focusses on networks or connectedness to illuminate empire. In addition to the references cited in the preceding footnotes, see for example, Alan Lester, *Imperial Networks: Creating Identities in Nineteenth-Century South Africa and Britain* (Abingdon,

concept of networks in imperial history may suggest a way of thinking about colonised spaces which can free us from excessive attention to places as 'bounded entities'. Instead, borrowing from the discipline of geography, we might think of places (embedded in networks) as 'specific juxtapositions of multiple trajectories', including trajectories of 'people, objects, texts, ideas'.⁴⁰ This can be fruitfully linked to the discussion above about forms of empire, and the way that our understanding of places like the Chinese treaty ports is limited if tied to the idea of sovereignty over demarcated territory. If we conceptualise colonised places differently, by shifting the emphasis from the geopolitical realm of territories with boundaries subject to the sovereignty of a colonial power – which is itself a way of thinking about the world rooted in western imperial expansion and nation state formation – we can instead direct our focus to the effects and implications which resulted as people and things interacted at those places. This is particularly appropriate in the case of the treaty ports, in which foreign space often lacked precise, delineated boundaries. A networked conception of imperial space – which emphasises processes over legal definitions – creates more room for a recognition of the exercise of colonial power by the British state in China and its role in creating colonised spaces at the treaty ports, in the absence of full territorial sovereignty.

One place where we can clearly see the variety of British trajectories which converged at the treaty ports, and their implications as they were placed in juxtaposition, is in the extraterritorial courtroom. When a British subject was accused of manslaughter of a Chinese person but acquitted by a white British jury, or when Indian British subjects employed as police by the Shanghai Municipal Council were brought before the court for going on strike, people, ideas and practices originating in a variety of places came together in productive ways. John

2005), Kerry Ward, *Networks of Empire: Forced Migration in the Dutch East India Company* (Cambridge, 2008), and Simon J. Potter, and Jonathan Saha, 'Global History, Imperial History and Connected Histories of Empire', *Journal of Colonialism and Colonial History*, 16, 1 (2015).

⁴⁰ Alan Lester, 'Imperial Circuits and Networks: Geographies of the British Empire', *History Compass*, 4, 1 (2006), 124–41, p. 135. A similar notion of imperial space is proposed in Tony Ballantyne and Antoinette Burton, 'Introduction: The politics of intimacy in an age of empire', in Tony Ballantyne and Antoinette Burton (eds.), *Moving Subjects: Gender, Mobility, and Intimacy in an Age of Global Empire* (Chicago, 2009), pp. 1–30.

Comaroff has argued for the centrality of law to colonialism, listing the various ways in which he says that ‘cultures of legality were *constitutive* of colonialism tout court.’ He goes on to make a point which is particularly applicable to this research:

it was under legal provisions that the “nature” of colonial subjects was construed, ethnicized, and racialized, their relations to other human beings, to the earth, and to their own cultural practices delineated.⁴¹

As this thesis examines the way that marginal British subjects, and also Chinese people, were dealt with by the British courts, it will show the ways in which such processes worked in practice towards the constitution of Shanghai in particular as a colonial space, in ways which were simultaneously mental and physical. This is naturally linked to the politics of difference, discussed above, and which Elizabeth Kolsky has examined in detail in her work on law in India. Kolsky has shown how the British in India subscribed to various principles of clear boundaries and of impartial justice, which were not maintained in the ‘messy work of empire’ in practice.⁴² An examination of colonial law as practised in the courts allows for a truer picture of the state to emerge than if reliance is placed solely on official archives and legislation. Court cases allow us to consider what Marie Muschalek calls the ‘multilateral complexity of colonial rule’: for example, the handling of individual cases can show what kinds of violence were tolerated by the state in practice.⁴³ The language and deportment of officials in the courtroom can also illuminate the colonial relations which existed in a given place. Jonathan Saha has argued that law was a ‘performative resource of state power’ and that the corrupt practice of law and governance in Burma was constitutive of the state there.⁴⁴ The performance of British state power through the law in China was witnessed by, and had effects on the lived worlds of, both foreign and Chinese inhabitants of the treaty ports, especially Shanghai where the British Supreme Court for China was based.

⁴¹ John L. Comaroff, ‘Colonialism, Culture, and the Law: A Foreword’, *Law and Social Inquiry-Journal of the American Bar Foundation*, 26 (2001), 305–14.

⁴² Kolsky, *Colonial Justice*, p. 4.

⁴³ Marie Muschalek, ‘Violence as Usual: Everyday Police Work and the Colonial State in German Southwest Africa’, in Søren Rud and Søren Ivarsson, (eds.), *Rethinking the Colonial State* (Bingley, 2017), 129–50.

⁴⁴ Jonathan Saha, ‘A Mockery of Justice? Colonial Law, the Everyday State and Village Politics in the Burma Delta, C. 1890–1910’, *Past & Present*, 217, 1 (2012), 187–212, p. 192.

This discussion of the historiographical contexts has shown the ways in which this thesis presents findings and arguments which complement and extend existing historical work. It has emphasised the lack of attention which has hitherto been paid to important aspects of the British state's role in treaty port China. It has suggested how an approach informed by the work of historians on other contexts which has productively analysed the management of difference by colonial authorities may provide a clearer understanding of colonial relations and colonial practices in the treaty ports. Finally, it has also shown how attention to state management of problem populations in China can help to provide a history of foreign expansion there which traces more fully the nature of imperial networks which connected, and indeed served to constitute, the treaty ports as colonial spaces, especially through the legal system created by the British in China.

Britain in China before 1842

This thesis focuses on the period after 1842 when British commercial and institutional expansion increased enormously following the end of the Opium War, the signing of the first treaties, and the opening of five ports to foreign commerce – the first treaty ports. There was a prehistory of interaction prior to this expansion, however, going back around two hundred years. This must be understood in order to see why extraterritoriality, on which British governance in China was based, was provided for in the treaties made after the first Opium War. The commercial aspects of the early trade between Britain and China, which began in the seventeenth century, including the development of the opium trade and eventual war fought over its conduct, have been well researched.⁴⁵ Here I will give a brief account of this period which focusses instead on approaches to governance over British subjects and also British institutional developments.

Until 1834, British trade with China took place under the monopoly held by the East India Company (EIC), but involved both Company-owned and private ships, which operated under licence from the Company.⁴⁶ At first, such ships called

⁴⁵ A concise summary is given in Robert Bickers, *The Scramble for China: Foreign Devils in the Qing Empire, 1832-1914* (London, 2011), pp. 80-6. A more detailed recent treatment can be found in Julia Lovell, *The Opium War: Drugs, Dreams and the Making of China* (Basingstoke, 2011).

⁴⁶ Michael Greenberg, *British Trade and the Opening of China 1800-1842* (Cambridge, 1969), p. 11.

speculatively at a variety of South China ports and attempted to trade profitably, hoping to interest Chinese buyers in foreign goods such as British woollens and Indian cottons, and purchasing Chinese goods such as tea, silk and porcelain. In 1699 the EIC appointed an officer with the title of president to supervise the trade. The first president, Allen Catchpoole, was also given the title of consul for China by the king, a common practice in connection with EIC presidents in other parts of Asia.⁴⁷ He sailed to Zhoushan and Ningbo to attempt to oversee trade there, thus technically becoming the first British official to visit China. While at Zhoushan, he experienced difficulties in exercising control over captains of private British ships, and in dealing with them the office of consul seems not to have had much practical use. Catchpoole was criticised by some captains for being unable to offer any protection to British subjects in China. It seems that the main aim in according him the titles of president and consul was to assist him in making contact with Chinese officials, for the benefit of easing trading restrictions, at the highest level possible, preferably at Nanjing, a goal which was not successfully attained.⁴⁸

The EIC failed to open satisfactory channels for trade at Ningbo, Zhoushan or Xiamen (where attempts were also made), but at Guangzhou they had more success, and trade there increased. From 1757, following further attempts by the EIC to initiate trade at ports further north, the Chinese government stipulated that all foreign trade must thenceforth be done at Guangzhou.⁴⁹ At the latter port foreigners were subject to many restrictions, including the rule that trade was only to be done through Chinese merchants there accredited by the local authorities, who were known collectively by English speakers as the 'cohong' (in Chinese *gonghang* 公行).⁵⁰ The Chinese official attitude towards foreigners can be summarised as a desire to keep foreigners at arms length, and minimise points of contact between foreigners and Chinese people and places. Foreigners in China

⁴⁷ John Bruce, *Annals of the Honorable East-India Company*, Vol. 3 (London, 1810), p. 332.

⁴⁸ Hosea Ballou Morse, *The Chronicles of the East India Company, Trading to China 1635-1834*, vol. 1 (Boston, 1926), p. 109.

⁴⁹ Morse, *International Relations*, vol. 1, p. 67.

⁵⁰ Morse, *International Relations*, vol. 1, pp. 63-71. Most English-language texts use the contemporary rendering of this word, cohong or co-hong, which was presumably based on an interpretation of the pronunciation in the local Guangzhou dialect. Individual merchants were called Hong merchants.

were thus in an uncomfortable and precarious situation – only the security of the Portuguese territory at Macao, where most British figures engaged in trade lived for part of the year, made it possible to operate within the Chinese restrictions. Although the British were frequently frustrated by the limitations on their activities, a very valuable trade took place, especially in tea, increasingly in demand in Great Britain, and eventually, from the middle of the eighteenth century, also in opium, which although illegal found a ready market in China. Opium was brought from India by the private traders, many based in India, a number of whom were Parsis.⁵¹

The functioning of a basic system of control over British subjects in China was possible at this time because the EIC had both the incentive and the powers to oversee it. From the late eighteenth century the EIC appointed a group of supercargoes (commercial agents responsible for trade), known as the Select Committee of Supercargoes, to lead their activities in China. They naturally wished to eliminate behaviour in China which might cause interruptions to trade resulting from disputes with the Chinese. The EIC was able to maintain some control over British subjects in China, because since it held a British government-sanctioned monopoly, all those engaged in the trade were either its employees or were licenced by it. Employees could be disciplined or dismissed and private traders could be excluded from the trade by the EIC if they did not cooperate.⁵² There were a number of outbreaks of violence committed by British subjects, especially seamen, in or near Guangzhou as the trade increased, and it fell to the Select Committee to decide how to respond. Other than in cases of homicide against Chinese, the Chinese authorities did not generally try to assert Chinese jurisdiction with regard to legal process and punishment of crimes committed by foreigners, so that in the case of British subjects, the EIC Select Committee was left to handle matters.⁵³ In 1784 a Chinese man was killed by a salute fired from the guns of a British ship, *Lady Hughes*, and the Chinese authorities demanded that the person

⁵¹ Morse, *International Relations*, vol. 1, p. 228.

⁵² Morse, *International Relations*, vol. 1, pp. 109-19.

⁵³ R. Randle Edwards, 'Ch'ing Legal Jurisdiction Over Foreigners', in Jerome Alan Cohen, Fu-mei Chang, and R. Randle Edwards (eds.), *Essays on China's Legal Tradition* (Princeton, N.J., 1980), 222-269; Morse, *International Relations*, vol. 1, p.101.

responsible be handed over to them for trial and punishment. A British gunner was eventually handed over to the Chinese authorities and was executed; following this punishment, seen by the British as unjust, the British refused from this point on to hand over European British subjects accused of homicide to the Chinese authorities.⁵⁴ The case cast a long shadow and was frequently used in later debates to demonstrate Chinese barbarity and to justify foreign extraterritoriality in China.⁵⁵

In 1834 the British government ended the EIC's monopoly on trade in China, and vested control over British activities there in a new institution created to oversee the trade with China – the Superintendency of Trade.⁵⁶ This was the first true institution of the British state to be established on Chinese soil, and was headed by three men, one of whom was given the title of chief superintendent of trade. An act of parliament and two orders in council (OICs) were made in 1833 to endow the superintendents with authority to exercise control over British subjects and to enable the creation of a British court of justice at Guangzhou, over which the chief superintendent would preside.⁵⁷ The first chief superintendent was Lord William Napier, formerly an officer of the Royal Navy. The other two superintendents were former EIC supercargoes: John Francis Davis (who later became chief superintendent and governor of Hong Kong) and George Robinson.⁵⁸ The court provided for by means of the legislation of 1833 was not established immediately, under instructions from Lord Palmertson to postpone taking any steps to bring it into service, and indeed no permanent British court, with a regular schedule of

⁵⁴ Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford, 2012), p. 43. According to Koo, a lascar (a South Asian seaman, and probably therefore a British subject) was handed over to the Chinese authorities in 1833 following the killing of a Chinese near Guangzhou. V.K. Wellington Koo, *The Status of Aliens in China*, (New York, 1912), p. 79.

⁵⁵ Cassel, *Grounds of Judgment*, p. 43.

⁵⁶ Bickers, *The Scramble for China*, p. 45.

⁵⁷ Great Britain. 'An Act to Regulate the Trade to China and India: 3 & 4 Will. 4. c. 93'; Great Britain. 'Order in Council, Transferring the Court of Justice from Canton to Hong-Kong, for the Trial of Offences Committed by British Subjects in China,' 9 December 1833; Great Britain. 'Order in Council, Relative to the Government and Trade of British Subjects, at Canton, in China,' 9 December 1833. All printed in Great Britain. Foreign Office, *British and Foreign State Papers* (hereafter *BaFSP*), 1832-1833, vol. 20, (London, 1836), pp. 256-9; 260-1; 262-3.

⁵⁸ Initially, William Plowden, former president of the EIC Select Committee was appointed one of the superintendents, but he left China before Napier's arrival and Robinson was appointed to fill the resultant vacancy. Morse, *International Relations*, vol. 1, p. 119.

operation or fixed premises, was opened in China before the Opium War.⁵⁹ When a man called Lin Weixi was killed in an incident involving British seamen in 1839, at a time when the dispute between Britain and China over the opium trade was growing in intensity, Chief Superintendent Charles Elliot held court proceedings under the 1833 OIC in a temporary courtroom set up on a British ship, in response to Chinese demands that those responsible be punished.⁶⁰ He sentenced five men to imprisonment for engaging in a riot, but the sentence was not carried into effect and the men were released in Great Britain since the courts there decided that Elliot lacked the required authority over British subjects.⁶¹

Other aspects of the post-EIC establishment were also defective. Superintendent Elliot had between 1836 and 1838 attempted to stop armed British smuggling boats landing near the custom house at Guangzhou, and created 'police regulations' as a step to prevent this activity. When he reported his actions to the FO, he was told that he had no power to create such regulations under the British legislation.⁶² The removal of the monopoly of the EIC may have inserted professional British state officials into China for the first time, but it seems that owing to the faulty legislation created to endow them with authority, they were less able to effect order and control over British subjects than had been possible under the EIC's Select Committee prior to 1834. Reporting his inability to prevent a British subject absconding from China, having defrauded British and Chinese subjects of goods worth large sums of money, Elliot made the case to Palmerston in 1837 that greater powers were needed:

This may be a convenient occasion respectfully to press the necessity for the early establishment of some formal and efficacious means of maintaining a state of good order amongst His Majesty's subjects in this country, and for the adjustment of disputes involving claim of money which may arise on the spot.⁶³

⁵⁹ Morse, *International Relations*, vol. 1, pp. 120-1. Koo, *The Status of Aliens*, pp. 109-10.

⁶⁰ Morse, *International Relations*, vol. 1 pp. 237-8. The man's name is rendered in some texts as Lin Wei-hi or Lin Weihe. The killing of Lin Weixi played a significant role in escalating tensions between Britain and China which would lead to the outbreak of the Opium War. See Lovell, *The Opium War*, pp. 72-4.

⁶¹ Morse, *International Relations*, p. 238, fn. 114; Lovell, *The Opium War*, p. 74.

⁶² Koo, *The Status of Aliens in China*, p. 110.

⁶³ Elliot to Palmerston, 2 June 1837. BPP, HC, *Papers relative to the Establishment of a Court of Judicature in China, for the Purpose of Enabling the British Superintendents of Trade to Exercise*

In 1842, the Opium War ended with the signing of the Treaty of Nanjing. The most significant provisions of the treaty were that five ports (the first 'treaty ports') would be opened to British subjects for residence and trade, Hong Kong island would be ceded to Britain and British consuls would be posted at each port and would have jurisdiction over British subjects in China.⁶⁴ One lesson clearly learned by British officials locally and in London, from their experiences prior to the Opium War, was that a more effective means of control would be needed as the British presence expanded with the opening of the treaty ports and the expansion of trade which was subsequently expected to take place. This process is examined in more detail in chapters one and two.

Control over the Proceedings of British Subjects, in their Intercourse with each other and with the Chinese, vol. 41, [c.128], (1838), p. 7.

⁶⁴ Bickers, *Scramble for China*, p. 84. The five ports were (as viewed on the map from south to north up the Chinese coast) Guangzhou, Xiamen, Fuzhou, Ningbo and Shanghai. Foreign trade and residence was still kept at some distance from Beijing. See figure 1. below.



Figure 1. Map of China in 1918, showing the major treaty ports and foreign leased areas. The first five treaty ports, opened under the 1842 Treaty of Nanjing, are indicated by rectangular frames.⁶⁵

⁶⁵ Adapted from Robert Bickers, *Out of China: how the Chinese ended the era of western domination* (London, 2017).

Overview of the foreign presence in China from 1842 - 1927

The aim of this thesis is above all to incorporate the British state into the internationalised history of China, and this thesis therefore will focus on British subjects, officials and institutions, but it is important to remember that the British were not the only foreign actors in China. Other foreign states and their nationals also entered into trading and other relations in China, on similar terms to the British. Prior to the Opium War other countries whose nationals engaged in trade in a substantial way included Portugal (especially important owing to its control over the territory of Macao near Guangzhou), the Netherlands and the United States.⁶⁶ Following the Opium War, the United States and France also made treaties with China, giving them the same privileges as the British. The treaties included 'most favoured nation' clauses, so that when one foreign states gained increased rights through a treaty, the other treaty powers also benefitted in the same way.⁶⁷ In this way the foreign expansion into China which Britain had spearheaded through its actions in the Opium War became a multinational phenomenon. Foreign countries which made treaties with China all gained extraterritorial rights for their nationals and were thus responsible for the administration of justice in relation to them. Two latecomers to foreign expansion into China, Germany and then Japan, made up for lost time towards the end of the nineteenth century, and became important treaty powers. Several foreign states founded institutional presences on the China coast, but none were as extensive as the British, until the rise of Japanese power from the late nineteenth century.⁶⁸

In Shanghai and in Beijing, representatives of the foreign powers at each city formed in the 1860s a 'consular body' and a 'diplomatic body' respectively, in order to coordinate their position in a number of matters relating to foreign relations, trade, and administration in China. These bodies were especially

⁶⁶ Morse, *International Relations*, vol. 1, p. 82.

⁶⁷ Osterhammel, 'Semi-Colonialism and Informal Empire in China: Towards a Framework of Analysis', in Mommsen and Osterhammel (eds.), *Imperialism and After: Continuities and Discontinuities*, p. 300.

⁶⁸ For a comparison of foreign establishments in China in the early twentieth century, see Robert Bickers, 'British Concessions and Chinese Cities, 1910s-1930s', in Billy K.L. So and Madeline Zelin (eds.), *New Narratives of Urban Space in Republican Chinese Cities* (Leiden, 2013), 157-95.

important in dealing with the oversight of the constitution and administrative powers of the International Settlement at Shanghai.⁶⁹

The first treaty ports grew and developed in an extremely uneven way, and most were a disappointment to the British. Shanghai was the exception and soon became an important centre for shipping, being strategically located near to the mouth of the Yangzi, and eventually it was also an important location for foreign investment in land, manufacturing, and services. None of the other five ports became important as large centres of foreign residence or investment. Fuzhou was dominated by the tea trade and when this declined from the late nineteenth century, it lost its importance as a treaty port. Xiamen was most important for its connections with southeast Asia, and much of the trade conducted through the port involved ethnic Chinese from southeast Asia, some of whom were British subjects through birth or naturalization in the Straits Settlements. It was an important centre for the 'coolie' trade, from which British and other firms profited, transporting large numbers of Chinese labourers, not all of whom had been recruited voluntarily, to plantations and mines in southeast Asia, South America and the Caribbean where they worked under harsh conditions. Ningbo was never an important port for foreign trade, but attracted foreign convoyers, little different from pirates, who engaged in dubious maritime activities in the 1850s and 1860s.⁷⁰ Guangzhou was a busy port, with important trade connected with its relatively prosperous hinterland, but lost out to Shanghai as the main centre for foreign trade, residence and investment from the mid-nineteenth century onwards.

The physical space occupied by foreign residents and businesses at the treaty ports was established on terms which varied, often according to the way the first foreign officials negotiated the institutional and physical environments which they encountered at the different places where they were posted. The actions of the first British and other foreign consuls therefore influenced the subsequent

⁶⁹ Anatol M. Kotenev, *Shanghai: Its Mixed Court and Council* (Shanghai, 1925), p. 15.

⁷⁰ Morse, *International Relations*, vol. 1, pp. 406-8.

development of some of the ports.⁷¹ Chinese officials were in general hostile to foreigners taking up residence within the existing Chinese towns or cities at the treaty ports. At Fuzhou and Guangzhou, confrontations over this issue led to violence, and in the case of Guangzhou, British access to that city was a major contributing factor to the outbreak of the Second Opium War in 1856.

At Shanghai, the British consul made an agreement with the leading local official – the *daotai*, usually translated as ‘circuit intendant’ – to establish a special area for British residence, north of the existing Chinese city, alongside the Huangpu river.⁷² Land was apportioned for this purpose, lots were acquired by foreign merchants (not all British subjects) and their titles were registered at the British Consulate. This area was usually called the English Settlement by contemporaries, although sometimes the word concession was confusingly used in place of settlement. In Chinese only one term was used: *zujie* (租界) meaning ‘leased area’.⁷³ In the following years the United States and French consuls also made agreements for the setting aside of areas, neighbouring the English Settlement, for the residence of their nationals. In 1845 the British consul agreed with the *daotai* a set of regulations, known as the Land Regulations, which provided for residents of the English Settlement to set up an institution to manage basic functions of local government, called the Committee of Roads and Jetties. This was made up of three land renters (the land acquired in the settlement was technically leased, though it was effectively owned as the leases were perpetual, and the leaseholders were called land renters). The committee was held to account at an annual meeting of ratepayers chaired by the British consul.⁷⁴ This body eventually developed into the Shanghai Municipal Council (SMC) in the mid-1850s, following the making of new Land Regulations, prompted by the influx of Chinese into the foreign settlements who came seeking refuge from the upheaval of the great rebellions taking place at the time in eastern China. This rapid population growth posed

⁷¹ Morse, *International Relations*, vol. 1, pp. 346-66.

⁷² On the office of *daotai*, see Leung Yuen-sang, *The Shanghai Taotai: Linkage Man in a Changing Society, 1843-90* (Honolulu, 1990).

⁷³ Robert Bickers, ‘British Concessions and Chinese Cities, 1910s-1930s’, in Billy K.L. So and Madeline Zelin, (eds.), *New Narratives of Urban Space in Republican Chinese Cities* (Leiden, 2013), 157-195, p. 159.

⁷⁴ Morse, *International Relations*, vol. 1, p. 351

greater administrative challenges, particularly in the area of policing. In 1863, the American Settlement merged with the English Settlement to form the International Settlement, which was governed by the SMC. The French settlement, known as the French Concession, remained a separate entity with different forms of governance.⁷⁵ Once it became the International Settlement, the SMC annual meeting of ratepayers was usually chaired by the senior consul, and the Shanghai consular body had a supervisory role over the Council while also serving as an intermediary between the SMC and the local Chinese authorities.⁷⁶

Following the end of the Second Opium War in 1860, Qing officials agreed to the establishment of a further twelve treaty ports, and areas were acquired in some of these by treaty powers for their residents under different terms than the earlier settlements at Shanghai and elsewhere. Parcels of land described as concessions were rented on long leases from the Chinese government by individual treaty power governments, who then sublet plots of land to foreigners. Some of the foreign concessions established at this time grew to become fairly substantial, for example those at Hankou and Tianjin. Municipal Councils were formed at the concessions, usually headed in the British case by the British consul at each port where a concession was established.⁷⁷

Although the treaties with China provided for favourable tariffs, rights of residence, extraterritoriality and other advantages for foreigners in China, trade never matched the extravagant hopes of British and other foreigners in the mid-nineteenth century. British business dominated foreign trade and investment in China in the nineteenth and early twentieth centuries, but exports of goods other than opium were disappointing.⁷⁸ Britain also dominated the shipping industry in China, and British businesses moreover saw healthy growth in other service industries such as insurance and banking. Some of the biggest foreign fortunes in

⁷⁵ Morse, *International Relations*, vol. 2, pp. 119-20.

⁷⁶ See reports of annual meetings in the *North China Herald (NCH)*. For the consular body as intermediary, see for example Morse, *International Relations*, vol. 2, pp. 113-4.

⁷⁷ Bickers, 'British Concessions and Chinese Cities' in So and Zelin, (eds.), *New Narratives of Urban Space in Republican Chinese Cities*, pp. 167-8.

⁷⁸ Jürgen Osterhammel, 'British Business in China, 1860s-1950s', in R.P.T. Davenport-Hines (ed.), *British Business in Asia since 1860* (Cambridge, 1989), 189-216, p. 192.

China were made from the development of land at the treaty ports, especially Shanghai, where the Chinese population grew considerably as a direct result of its status as a foreign-controlled (and foreign-protected) enclave.

British and other foreign expansion in China was not limited to the cession of small areas of territory such as at Hong Kong and Macao, expansion of business under favourable conditions forced out of China and written into the treaties, and the establishment of the treaty ports as micro-colonies. Foreign power embedded itself in China in various other ways which taken together combined to make the Chinese experience of imperial expansion a peculiar case. The Chinese customs service is the most obvious example, a body which was led by foreigners – usually a British subject, and most notably Ulsterman Robert Hart – and which meant that the Chinese central government's largest and most consistent source of revenue was administered by foreign staff under Qing control.⁷⁹ In the late nineteenth century new encroachments multiplied, both in number and form and there was also an increase in the number of foreign states which joined the rush to wring concessions from the ailing Qing Chinese state.⁸⁰ So for example, in 1898 new leaseholds over pieces of territory were granted to Germany at Qingdao, Britain at Weihaiwei and the New Territories, France at Guangzhouwan and Russia at Dalian (Port Arthur).⁸¹ The major foreign powers also established and agreed spheres of influence, so that China was divided into areas in which each foreign power was, at least nominally, to be preeminent. In the area of commerce foreign powers pushed for businesses controlled by their nationals to be the providers of loans to the government (often partly needed to pay for indemnities incurred after China lost wars against foreign governments) and the developers of railway building schemes and mining concessions. The rise of Japanese power in the late 1890s had a profound effect: when China lost the Sino-Japanese war in 1895, not only did

⁷⁹ A range of work has been published on the Customs in recent years. See especially Robert Bickers, 'Purloined Letters: History and the Chinese Maritime Customs Service', *Modern Asian Studies*, 40, 3 (2006), 691–723, Hans Van de Ven, *Breaking with the Past: The Maritime Customs Service and the Global Origins of Modernity in China* (New York, 2014), and Catherine Ladds, *Empire Careers: Working for the Chinese Customs Service, 1854–1949* (Manchester, 2013).

⁸⁰ The best known example illustrating the large number of foreign states involved comes from Tianjin, where there were foreign concessions belonging to nine different countries.

⁸¹ Feuerwerker, *The Foreign Establishment in China*, pp. 9–10.

Japan obtain further concessions and indemnities, but Taiwan was also ceded, becoming by far China's most important loss of territory to a foreign power in the nineteenth century. After the fall of the Qing in 1911, China became fragmented and was under the rule of a variety of regional factions dominated by warlords. Only once the Guomindang rose to power from the end of the 1920s did the situation begin to change with regard to western powers, although Japanese expansion into China grew and had a huge impact until the defeat of Japan in the Second World War. From the late 1920s, Britain began to give up its concessions, beginning with Hankou in 1927, as part of a gradual process of official retreat which continued over the subsequent two decades.⁸²

Sources

In the course of their engagement in the processes described above, British officials in China, at other posts in Asia, and of course in London, produced a rich archive of documentary material, much of which was well looked after, and a good deal of which has been gathered together and preserved at the National Archives, Kew, London. Despite the relative completeness of these records and the ease with which they can be accessed, this resource has been under-exploited by historians of modern China. These materials, together with (to a more limited extent) the India Office records at the British Library in London, have made up the key primary sources deployed in the research for this thesis. The research has entailed an examination of a wide range of records, reflecting the extensive range of state actors at different locations who played a role in British governance in China, and my aim to present a history of the British state in China which integrates the full range of official agents who played significant roles in the British project of governance. The most important file series consulted were those containing records of key institutions engaged in the state's project of governance in China: the superintendent of trade/minister (FO 228), the FO in London (FO 17, FO 97 and FO 371), the law officers of the crown (FO 83 and FO 96), the Shanghai Consulate (FO 671) and the British Supreme Court for China (FO 656). A complete list is given in the bibliography.

⁸² Phoebe Chow, *Britain's Imperial Retreat from China, 1900-1931* (London, 2017).

These archival sources have been read in two ways: first, as documents which can help us to determine what actions were taken by the British state in China; and second, as documents which contain evidence of the attitudes, often not explicitly articulated, of British officials dealing with processes connected with British expansion in China. This has involved a careful reading of documents, attempting to draw meaning from them in the way proposed by Ann Laura Stoler:

Here I attempt to distinguish between what was "unwritten" because it could go without saying and "everyone knew it," what was unwritten because it could not yet be articulated, and what was unwritten because it could not be said.⁸³

Newspaper articles and editorials, mostly from the Shanghai-based English language press, have been used extensively for their reports of court cases, to supplement the details of cases contained in official papers held in the archives referred to above. As much as possible I have based analysis of court cases on both reports of proceedings published in the press and documents circulating between officials, which often reveal the ways in which practices deviated from legal procedures and are therefore highly revealing of official attitudes. However, although press reports sometimes reveal information lacking in official documents (and vice versa), it must be acknowledged that this will always be an incomplete picture, particularly where performative aspects of legal practices are concerned – there can only be a very partial reconstruction of what went on in the courtroom, in particular in areas such as bodily practices and ways of speaking. No doubt much occurred which would be relevant to my arguments but which will always remain beyond the reach of the historian.

Newspaper reports have also been used to assist in building a picture of British – especially marginal – colonial life in China, and also occasionally to consider commentary from another standpoint – generally that of British settler and mercantile interests – on major events or issues which occurred involving the British state and British subjects. The views of members of marginal communities

⁸³ Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, 2010), p. 3.

are sometimes accessible through letters published in newspapers, reported speech in accounts of court hearings, and correspondence with officials, although only to a very limited degree. However, my aims in this thesis and the arguments I make are not focussed on recovering the subjectivity of marginal British subjects; the central focus here is on the attitudes and practices towards marginal British subjects held by British officials who viewed the former as problem populations. The voices and preoccupations of marginal British subjects themselves are therefore only present in this thesis to a very limited extent, but the details of the British marginal communities which are given in the chapters will be of use in any future research which aims to analyse the nature of the lives of these sojourners and settlers.

A further source of official documents which has been used extensively is published collections of British state papers, including laws, treaty texts, OICs, and regulations. The key collections are *Hertslet's China Treaties* (two volumes), *Hertslet's Commercial Treaties* (31 volumes) and *British and Foreign State Papers* (170 volumes). British Parliamentary Papers have also been used, especially those which collect correspondence relating to China at moments when British actions were under scrutiny.

Thesis structure

The thesis is made up of five substantive chapters, the first of which sets out the organisation and functions of British state institutions in China and the treaties, legislation and other instruments on which their existence and activities were based from 1842 to 1927. This period covers the decades when the British machinery of governance was being established in China and also the years in the early twentieth century which can be considered to have been the 'apogee' of the foreign presence in China, before the treaty system began to be dismantled beginning in the late 1920s.⁸⁴ The chapter provides both a contextual basis within which we can understand the management of British subjects in China which is covered in the rest of the thesis, and also sets out arguments relating to the extent

⁸⁴ Albert Feuerwerker, *The Foreign Establishment in China*, p. ix.

and nature of the state's presence and actions in China, and the way that the British state presence was located within a network of relationships with other bodies, both official and unofficial.

While the first chapter presents an overview of the British state's contours in treaty port China, a fuller representation of various aspects of the state and of the processes it engaged in is achieved in the chapters which follow. These turn to examine four diverse but prominent marginal groups which have been selected as case studies of British governance in China – white Britons who committed violent crime, ethnic Chinese British subjects, British Eurasians and 'martial' British Indian colonial subjects. In the course of looking at official handling of these groups, the chapters serve the additional role of presenting and evaluating a good deal of empirical data about these little-studied marginal groups in the treaty ports. Each of these groups were identified as problem populations because of some form of perceived deviance, in official eyes, from the desirable British subject who would serve a useful purpose in China, or at least not cause harm through their presence or activities. The thesis has been organised so that each marginal group is dealt with in a separate chapter because there were different issues, emerging at various points in time, which were particularly important in defining the official stance, or prompting an official response, in relation to each group. The chapters can also be said to be arranged, to some extent, around particular themes and also chronologically, since while there are some overlaps between the issues and time periods addressed in each of the chapters, different themes are prominent in each chapter and the key events and processes in the chapters emerged at various different points between the 1840s and the 1920s.

Chapter two, dealing with transgression in the form of crime, especially that committed by low-status white British subjects in China, focusses on the early part of the treaty era, when British officials were preoccupied with dealing with British seamen, who came to China along with the expansion of trade following the opening of the ports, and subsequently with a problem population which emerged, partly from among former seafarers, in the 1850s and 1860s, amidst the upheaval of Chinese rebellions. The chapter shows how the foundation of the British

Supreme Court for China in 1865 was influenced by the need to control such groups, and then goes on to analyse the way that this institution's creation influenced the development of Shanghai, particular through the way that it handled cases of British violence against Chinese.

Chapter three turns to focus on a very different marginal group, ethnic Chinese British subjects who came to the treaty ports and who claimed protection from British consular authorities there. The chapter shows the complicated, inconsistent and changeable nature of British governance in response to this group. It argues that, at least for a time, the interests of British colonial governments at Hong Kong and the Straits Settlements were allowed to influence British policy, against the prevailing view among many based in China and London. This influence led to a policy change that increased the degree to which Britain's exercise of consular jurisdiction eroded Chinese state authority in the treaty ports and their hinterlands.

Chapter four examines the British official response to Eurasians with British connections at the treaty ports. It shows how some Eurasians, despite having no legal claim to British status, were able to claim some of the benefits of Britishness at the treaty ports, on the basis of certain performed characteristics. The way that the state responded to such people demonstrates the attitude of British officials towards treaty port society and institutions and shows that officials played a role in the development and strengthening of the sociocultural aspects of the treaty ports as sites of everyday colonial practice.

The final substantive chapter is concerned with probably the most marginalised of the groups studied, 'martial' British Indians in China. It shows how members of this group, who were largely drawn to China to work in security roles, particularly as employees of the SMC's police force, were subjected to a range of disciplinary measures by the state. British officials worked closely with the SMC to deal with these men, providing strong evidence of the way that British state and SMC agents collaborated in this area of mutual interest. The chapter gives a good deal of attention to the way that the British courts dealt with Indians in China, and shows

how judges adjusted their roles considerably in order to deal with Indians in ways which suited administrative priorities, and also conformed to British views regarding the essential nature of 'martial' Indians.

This research might have focussed on the treatment of other British subjects who were identifiable as distinct populations: Parsis from India or Sephardic Jews, for example, were other groups of British subjects or British protected persons who were categorised and differentiated by officials based on widely-understood contemporary categories.⁸⁵ Or it could have examined other groups marginalised on the basis of gender, social class or age. There is evidence of officials at times raising concerns about issues connected with particular members of a wide range of groups in China. For example, when British women married Chinese men and set up home with them, this caused official alarm and prompted officials to question how they should respond. The way that officials acted in such circumstances may certainly have been rooted in beliefs about the inherent natures of, in this example, British women (and of course Chinese men), based on contemporary cultural constructions, and there may have been some value in including a wider range of groups in this research. However, the choice of focus for the thesis is based on the evidence as to the groups which aroused most official concern, and provoked the greatest response, and therefore are judged to be able to tell us the most about the British state's project of governance in China and its wider effects. The problems raised by individuals belonging to other sub-categories of the British population never provoked any sustained heightened concerns or prompted any significant adjustment of institutions or practices, to an extent comparable to the four groups on which this thesis places its attention.

⁸⁵ The history of Jewish settlers and sojourners in the treaty ports is comparatively well covered. See for example, Chiara Betta, 'Marginal Westerners in Shanghai: The Baghdadi Jewish Community, 1845-1932', in Robert A. Bickers and Christian Henriot (eds.), *New Frontiers: Imperialism's New Communities in East Asia, 1842-1953* (Manchester, 2000), pp. 38-54; Maisie J. Meyer, *From the Rivers of Babylon to the Whangpoo: A Century of Sephardi Jewish Life in Shanghai* (Lanham, MD, 2003); Marcia R. Ristaino, *Port of Last Resort: The Diaspora Communities of Shanghai* (Stanford, Calif., 2001).

Examining attitudes and practices towards marginal British subjects brings to the surface processes and actions which were sometimes incoherent, incompetent or even illegal, and reveals connections and collaborations with other organisations which developed without fanfare and could otherwise be easily overlooked. Before presenting my findings regarding official dealings with the selected marginal groups, the thesis begins with a survey of the formal outlines of the British state presence as it developed in China, made up of legal instruments, institutions and personnel, a task which has not been undertaken in detailed form in any previous historical study of Britain in China. In combination, the structures and institutions which were created, and the attitudes and practices of officials working within them, had important consequences for the development of the treaty ports, especially Shanghai, as key sites of colonialism in China.

Chapter One - British state structures and institutions in treaty port China

In 1877 Sir Julian Pauncefote made the following assertion in a Foreign Office memorandum:

The British community in China and Japan, which is the most numerous, powerful, and wealthy community of British subjects to be found anywhere out of Her Majesty's dominions, and who represent far greater interests than are at stake in any but the largest colonies, look to the Chief Judge of Her Britannic Majesty's Supreme Court for protection against any illegal or arbitrary action on the part of Her Majesty's Diplomatic and Consular Authorities.¹

Pauncefote was a key Foreign Office figure in the late nineteenth century, an experienced lawyer and also a rare example of a London official with considerable first-hand experience of Britain in China.² His words demonstrate the importance of the British presence in China as viewed from London at the time, and also its complexity. In one sentence we are introduced to three elements of the British presence, and are alerted to the sometimes inharmonious relationships which existed not only between British official and private interests in the treaty ports, but also between different arms of the British state exercising power in China. The court to which Pauncefote was referring was the Shanghai-based British Supreme Court for China (hereafter the SCC), one of the most significant British institutions in China over most of the treaty century, but one which has not featured prominently in much historical work on Britain in treaty-era China.³

This omission is probably a result of the fact that the British presence in China was dominated by commercial interests, and that British policy towards China never

¹ TNA: FO 17/944, 'Memorandum by Sir J. Pauncefote respecting Her Britannic Majesty's Supreme Court for China and Japan', September 1877 (exact date not specified; printed as confidential print 6 February 1878).

² When he wrote the memorandum Pauncefote was Assistant Permanent Undersecretary at the Foreign Office. He had a few years earlier served in Hong Kong as Attorney General. He went on to become Permanent Undersecretary at the FO and later Ambassador to the United States.

³ The full official title of the court at the time when Pauncefote was writing was 'Her Britannic Majesty's Supreme Court for China and Japan'. Works which do deal with the SCC include Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford, 2012); Emily Whewell, 'British Extraterritoriality in China: the Legal System, Functions of Criminal Jurisdiction, and its Challenges, 1833-1943', (unpublished PhD thesis, University of Leicester, 2015); and George Williams Keeton, *The Development of Extraterritoriality in China*, 2 vols. (London, 1928).

aimed at replacing the Chinese government as the principal administrative body in the vast majority of China's territory. The Qing state's ability to rule over affairs within its territory, though impaired, remained, in theory at least, broadly intact and the greater part of China was not under the formal administrative control of Britain or any other foreign power. As such, imperial expansion in China in the treaty century, as explained in the introduction, has often been regarded as an example of informal empire, and British state structures and institutions in China such as the SCC at Shanghai have received relatively little attention from historians. This chapter will argue for the importance of bodies such as the SCC, which formed part of the settled, institutional aspect of the state's presence in China, and the connections which were formed through such institutions. These factors are easily overlooked when the role of the state is thought of as a largely indirect force, or as episodic and inconstant in the application of its power, as in some analyses of informal empire. This chapter will describe elements of Britain's presence in China which were not in any sense informal and which were furthermore fairly stable and long-lasting – the British state institutions and structures, made up of policymakers (principally the Foreign Office and the British minister in China), legislation, courts, consuls, constables and gaols – which together furthered the state's project of governance over British subjects and British interests in China, which underpinned the operations of British-dominated non-state institutions and British commerce, and which also curtailed the sovereignty of the Chinese state in important ways.

In order to gain a deep understanding of the actions of official and unofficial Britons, without doubt the most influential foreign community in China, with the aim of better evaluating their place in Chinese history, we must understand the legal and regulatory regime under which they lived, and which offered them certain rights but also constrained their actions in various ways. Simply noting that they were under British jurisdiction is not enough, for as this chapter will show, the British state created a system of governance in China which was adapted specially for its purposes there. It was based on English domestic law, and on British colonial practices elsewhere, but with important modifications, often

prompted by the challenges created by marginal British subjects, as later chapters will demonstrate in some detail.

In the course of describing the creation of British institutions in China, the chapter will also consider how personnel, ideas and practices circulated throughout the British empire world to the fringes of empire through what Alan Lester describes as ‘multiple, co-existent connections’.⁴ Although connections through commerce and the military, especially with British India, have been described in existing work, it will be seen that the creation and reform of British state institutions in China led to the development of connections between British state structures in China and British institutions in different parts of the world, such as the Ottoman Empire.⁵ Such linkages, since they were not found in other aspects of the British presence in China, such as the commercial or military spheres, have been little explored. Furthermore, it will be shown that institutional connections were sometimes absent or were severed between the British state in China and state bodies and officials in parts of the British empire which were otherwise closely connected to Britain in China.

I will first examine the role of the British state’s leading official in China, the superintendent of trade (who was later usually referred to as the minister, although technically still also superintendent of trade) who, together with the Foreign Office (FO), was responsible for formulating policies in relation to the governance of British subjects and also for creating much of the legal framework intended to implement those policies. Then I move on to examine the British state structures in China tasked with their implementation: first, the network of consuls and their staff based at the open ports from 1843 onwards; and second, the SCC established in 1865 at Shanghai. The ‘men on the spot’ performing this work did of

⁴ Alan Lester, ‘Imperial Circuits and Networks: Geographies of the British Empire’, *History Compass*, 4, 1 (2006), 124–41, p. 129. See also, David Lambert and Alan Lester (eds.), *Colonial Lives across the British Empire: Imperial Careering in the Long Nineteenth Century* (Cambridge, 2006); Thomas R. Metcalf, *Imperial Connections: India in the Indian Ocean Arena, 1860-1920* (Berkeley, Calif., 2008).

⁵ For connections between the treaty ports and India, see Robert Bickers, ‘Britain and China, and India, 1830s-1947’, in Robert Bickers and Jonathan J. Howlett, (eds.), *Britain and China, 1840-1970: Empire, Finance and War* (Abingdon, 2016), 58–83.

course feed their views into policy and thus helped shape their own institutions and others with which they interacted, particularly in the case of the judges of the SCC, but the principal task of these officials was the implementation of policies, laws and regulations emanating from London, Hong Kong, and later, when the superintendent/minister took up residence there, Beijing. Equally importantly, the consuls and judges reacted with improvised and informal responses to issues thrown up by the governance of British subjects at their ports.

Hong Kong, Beijing & London: the superintendent of trade and the Foreign Office

After the conclusion of the first Opium War with treaties providing for greater freedoms for British subjects to trade in China, a new act of parliament and OICs were passed, which provided for the transfer of the British court (nominally based at Guangzhou) to the newly-ceded territory of Hong Kong. The chief superintendent of trade, who was also made Hong Kong governor, was to be responsible for the overall governance of British subjects in all of the treaty ports to be opened under the new regime. The process involved in creating this system of control, which was an integral part of the system for free trade envisaged by the treaties, involved a negotiation between British officials on the spot and those in London, both within the FO and outside it, in particular the law officers of the crown, who were frequently asked for their opinion on proposals to govern British subjects in China.⁶ It is clear that the FO desired at the outset to put in place a system which would actually enable the superintendent to exercise authority over British subjects. Therefore, at precisely the same time as the FO instructed Superintendent and Plenipotentiary Henry Pottinger to secure recognition of the principle of extraterritoriality 'in the most formal manner' from the Chinese plenipotentiaries (who had, according to an FO memo 'voluntarily recognized' it), moves were made in London to create a system which could provide a satisfactory means of managing the behaviour of British subjects in China.⁷

⁶ See Clive Parry (ed.) *Law Officers Opinions to the Foreign Office, 1793-1860*, vol. 19 (Farnborough, 1970)

⁷ TNA FO 17/76B: 'Memorandum: China Bill of 1843', 22 July 1843.

The FO and law officers drew on the precedent of consular jurisdiction in the Ottoman Empire, and experience there would also serve as an important model for policy in China at various later times, especially in 1865 when the system was overhauled (the 1865 reforms are dealt with later in this chapter). The 1843 memo also shows that foremost in official minds when creating the new regime was dissatisfaction with the powers of the superintendents under the 1833 Act, and the FO was determined that the new superintendent should be better equipped to maintain the peace in China by exercising greater control over British subjects. He was therefore given the new and important power to create, with the advice of the Hong Kong Legislative Council, laws and ordinances 'for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Emperor of China'.⁸ This was chiefly justified by the inability to anticipate precisely what powers would be needed and the distance between Great Britain and China, which made it impractical for the superintendent to consult London before enacting new regulations.⁹ The power meant that the superintendent could issue ordinances laying down specific rules to be observed by British subjects, often based on the treaties with China, or giving special powers to consuls in certain areas. This was an unusual but not unprecedented step – when the legislation was debated in the House of Lords it was pointed out, in response to accusations that it was a 'despotic power', that similar powers existed in relation to British subjects in independent chiefdoms or states neighbouring the colonies of the Cape of Good Hope and India.¹⁰

A few examples of early ordinances will give a flavour of the kinds of administrative actions taken at the time. Henry Pottinger's Ordinance No. 4 of 1844, prohibiting trade north of 32 degrees latitude, set out very severe penalties

⁸ Great Britain. 'Act of the British Parliament, for the better Government of Her Majesty's Subjects resorting to China: 6 & 7 Vict. C. 80', printed in Great Britain. Foreign Office. *BaFSP*, vol. 31 (London, 1843) p. 1230-3; 'Order in Council of 4 January 1843, transferring the court from Canton to Hong-Kong, for the trial of offences committed by British subjects in China', in E.W.A. Tuson, *The British Consul's Manual: Being a Practical Guide for Consuls, as well as for the Merchant, Shipowner, and Master Mariner, in All Their Consular Transactions* (London, 1856) pp. 189-90; 'Order in Council of 2 October 1843, relative to the laws and ordinances enacted by the superintendent of British trade in China', *BaFSP*, vol. 31 (London, 1843) pp. 1237-8.

⁹ TNA FO 17/76B: 'Memorandum: China Bill of 1843', 22 July 1843.

¹⁰ HL Deb. (3rd series), 7 August 1843, vol. 71, c. 316-7.

for infringement – a fine of up to \$10,000 or up to two years' imprisonment.¹¹ Samuel Bonham's Ordinance No. 2 of 1854 gave consuls jurisdiction over 'lunatics and persons of unsound mind' together with their property.¹² John Bowring's Ordinance No. 1 of 1855 enforced neutrality of British subjects in the 'civil war' in China (that is, the Taiping Rebellion), again with heavy penalties for infringement.¹³ When from 1859 the position of superintendent was separated from the role of governor of Hong Kong and given to the minister in China, the superintendent-minister's edicts were called notifications or regulations and later, king's regulations, rather than ordinances, but were effectively the same in terms of their use and means of enforcement. In addition to regulations framed to meet particular issues, there were general regulations, later known as consular district regulations, which imposed various rules on British subjects in the treaty ports. These covered such areas as formalities for British ships entering and leaving port, prohibitions regarding the firing of guns in harbour, formalities for reporting deaths or crimes occurring on board ships, requirements for ships not to leave behind seamen at port without the agreement of the consul, licensing requirements for British subjects establishing certain concerns, such as boarding-houses, and definition of the distance from the port which British subjects were allowed to travel into the interior.¹⁴

In the normal course of events the superintendent consulted London when creating ordinances or regulations. When the FO received a draft of a new ordinance, this was generally referred to the law officers of the crown, or later the FO's internal legal department, for comments on its legality.¹⁵ Regulations were often amended and sometimes rejected altogether by the FO or the law officers. In case of urgency, the superintendent could issue his ordinance or regulation to have

¹¹ *HCoT*, vol. 7 (London, 1850), pp. 175-8.

¹² *HCoT*, vol. 10 (London, 1859), pp. 56-7.

¹³ *HCoT*, vol. 10 (London, 1859), pp. 61-2.

¹⁴ See for example 'General Regulations for British Trade, in the Five Ports of China, 18 May 1854', in *BaFSP*, 1856-1857, vol. 47, (London, 1866), pp. 594-8; and also 'British Port Regulations', in *NCH*, 20 December 1913, p. 875.

¹⁵ Although from 1876 the FO created the role of Legal Assistant Under Secretary, which was initially filled by Pauncefote, who advised on legal questions, with the result that the law officers were consulted far less frequently. See A. W. Ward and G. P. Gooch (eds.), *The Cambridge History of British Foreign Policy*, vol. 3 (Cambridge, 1923). pp. 608-9.

immediate effect without referring to London, but it still needed to be approved retrospectively by the FO to remain in force. An example of this situation occurred in 1867 when Minister Rutherford Alcock issued an urgent notification authorising consuls to punish by fine or imprisonment certain unspecified acts which represented a breach of the treaties. The FO told Alcock, following the recommendation of the law officers, that the notification was disapproved (its stipulations and the penalties it set out were held to be insufficiently clear) and so it was necessary to publish its withdrawal in the *Supreme Court and Consular Gazette* in 1868.¹⁶

While there was, unsurprisingly, an abiding concern with order and stability evident in the kind of ordinances and regulations issued by successive superintendents, their purposes can be seen to have changed in important ways over the course of the treaty century. In the first decades, concerns with enforcing treaties, creating stable trading conditions, and keeping order among sailors were particularly evident.¹⁷ Later on, with the development of ever more substantial municipal authorities in many treaty ports, regulations were created to support and control those institutions and also to assist multinational bodies such as the Shanghai Municipal Council and even foreign authorities like the Russian Municipality at Harbin – regulations were issued in 1914 for the enforcement of its municipal bye-laws on British subjects.¹⁸ After its creation in the 1850s, a number of regulations were created to assist the work of the Chinese Maritime Customs Service, a Chinese government agency dominated by Britain, the work of which clearly served British interests and objectives in creating orderly structures to ensure the smooth running of trade.¹⁹ Examples included the General Pilotage

¹⁶ TNA: FO 233/67, 'Memorandum: general notifications and regulations issued from HM Legation Peking for the treaty ports, under Sec 85 of the Order in Council, 1865'.

¹⁷ In addition to those mentioned above, see also for example: Ordinance no. 5 of 10 April 1844, which made treaty provisions enforceable in the same way as ordinances, in *HCoT*, Vol. 7, pp. 178-83; and Ordinance no. 3 of 19 July 1849, 'for the safe and better custody of offenders sentenced to imprisonment by the consular courts in China', in *HCoT*, vol. 8, pp. 129-30.

¹⁸ For example, 'Regulations respecting veto by His Majesty's consuls on action of British municipal councils in China', 2 January 1907, printed in *HChT*, vol. 2, p. 1095; for Shanghai, see for example 'Regulation for the Shanghai Municipal Police, 12 October 1906, printed in *HChT*, vol. 2, pp. 1080-1; for Harbin, see Eric Teichman, *Vade-Mecum* (Tientsin, 1920), p. 68.

¹⁹ For a comprehensive survey of this body, see Hans Van de Ven, *Breaking with the Past: the Maritime Customs Service and the Global Origins of Modernity in China* (New York, 2014).

Regulations of 3 November 1868, 'for the better ordering of pilotage matters at the ports', the Shanghai Harbour regulations of 1900, the Customs Kongmoon Regulations of 1904 and the Quarantine Newchwang Regulations of 1906, all of which made Customs-originated rules legally enforceable on British subjects.²⁰ From the twentieth century, the emergence of new threats was reflected in the regulations created. The growing challenge presented by Indian revolutionaries based in China provoked a strong regulatory response – the issues their presence raised were considered important enough to be addressed through the creation of new OICs, as well as regulations, in some cases giving the minister special powers for dealing specifically with them, and also providing for close working with the SMC.²¹

As already noted, the superintendent held concurrently (after 1842) the position of governor of Hong Kong. This combination of roles sprang naturally from the fact that Hong Kong's purpose as a colony was as Britain's bridgehead in China, rather than as a valuable possession of itself. However, although Hong Kong when founded as a colony was clearly envisaged as serving the former role, its creation was quickly followed by the emergence of interests there which were the cause of difficulties for the British state in China and its chief official, the superintendent and governor. The existence of a crown colony in such close proximity to, and sharing apparatus of governance with, a domain where the British state exercised extraterritorial jurisdiction created serious complications not experienced in the Ottoman Empire, where the FO had the most extensive prior experience of managing extraterritorial jurisdiction. The key source of difficulty was the Hong Kong Supreme Court. From 1844 Hong Kong had its own court modelled on those in England, headed by an independent judge, and a jury system which drew on the non-official élite of the colony for its constituents. The court was created, like the colony, with the intention of serving the needs of British trade under the new treaty system, and its jurisdiction therefore extended not only over the colony of

²⁰ *HChT*, vol 2, p. 658; *HChT*, vol 2, p. 1162; *HChT*, vol 2, p. 1182; *HChT*, vol 2, p. 1081.

²¹ For example, new rules to prevent 'seditious conduct' and providing for additional powers to control British subjects employed in municipal police forces were brought into force by the 'China and Corea (amendment) Order in Council, 1909' of 18 October 1909, printed in *HCoT*, vol. 25, pp. 203-5. See chapter 5 for more on this subject.

Hong Kong, but also over cases arising on the Chinese mainland where a British subject was defendant. It became clear however from an early stage that the kind of administration of justice which the FO and superintendent wanted to deliver to British subjects in the treaty ports, principally in support of the aim of stable relations with the Chinese government under the treaties, was often of a different character from that which was on offer from the Hong Kong Supreme Court's juries, made up of the colony's non-official élites, and its judges, schooled in English legal traditions and uninterested in relations with the Chinese government or people.²² This is a theme which will be further developed in chapter two, since the need to deal with criminal behaviour in China, especially when it was perceived as likely to cause disruption in relations with the Chinese authorities, was a major factor which affected officials' handling of this dilemma.

British officials in China, especially successive superintendent-governors, were infuriated on a number of occasions by the Hong Kong Court's reversal of judicial decisions made by consuls, who heard less serious cases at first instance. This was a particularly serious problem in cases where the Chinese authorities were pushing for the British state to act against British subjects accused of wrongdoing, whether criminal acts or breaches of the treaties. Although Superintendent Davis had intended when establishing the system of consular jurisdiction that only cases of murder should be sent to Hong Kong for trial, in practice cases of various kinds arising out of the actions of British defendants in mainland China, including civil cases, were frequently moved to the Hong Kong Supreme Court, either by appeal, or through a process of judicial review (the legal term used was *writ of certiorari*).²³ Hearings in Hong Kong had clear potential disadvantages for Chinese complainants in particular: a combination of the court's fairly strict adherence to English legal forms (at least compared with the consular courts in China), the distance which complainants and witnesses might need to travel, the fact that

²² For a detailed survey of the contemporary Hong Kong legal system, see Christopher Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880* (Richmond, 2001), pp. 107-254. Munn shows that legal principles were however readily discarded by Hong Kong's magistrates when dealing with lower status Chinese accused of crime in the colony.

²³ John Francis Davis, 'Circular respecting consular jurisdiction', 22 November 1844, reprinted in Tuson, *The British Consul's Manual*, pp. 229-32; TNA FO 97/98: Alcock to Bonham, 10 January 1852.

juries were composed largely of British merchants, and the costs incurred in hiring counsel, all made the Hong Kong court an unsatisfactory forum.²⁴

Ordinances were passed by the superintendent-governor which modified the rights of appeal to the Hong Kong court, but the problem of interference by the latter institution was not fully resolved, and it was this recurring difficulty which provided the initial impetus for the creation of a new OIC at the beginning of the 1850s. Superintendent and Governor Bonham began the process by asking Shanghai Consul Rutherford Alcock to draft new ordinances to address the problem raised by the 1851 *Lady Mary Wood* case, in which the Hong Kong court had reversed Alcock's consular decision which found that a British defendant had committed a breach of the treaty.²⁵ Bonham described the main purpose of the draft ordinances as being to prevent the Hong Kong court interfering firstly with matters arising out of treaty rights and obligations, and secondly in all cases where Chinese subjects were plaintiffs or defendants.²⁶ The extent of the rift and difference of viewpoint already opened up between Hong Kong officials and those involved in governance of the treaty ports, including the superintendent-governor, was made starkly apparent when Bonham forwarded Alcock's drafts to London and made a point while doing so of explaining that he had not consulted the Hong Kong Attorney General or the Legislative Council on the proposals, presumably because he feared that they might object to them:

I think it right to comment that these ordinances were drawn up without the assistance of any legal advice – the Attorney General of Hong Kong – and have not been submitted for the consideration of the Legislative Council, my desire being to ascertain how far Her Majesty's Government may concur with me in the opinion, and in that of every Consul in China, of the inexpediency of allowing a Colonial Court of Justice to interfere in matters arising out of Treaty Rights to the great inconvenience of Her Majesty's plenipotentiary in China.²⁷

²⁴ P.D. Coates, *The China Consuls: British Consular Officers, 1843-1943* (Hong Kong, 1988), p. 53.

²⁵ Full details of this case can be found in Fairbank, *Trade and Diplomacy on the China Coast*, pp. 363-5.

²⁶ TNA FO 97/98: Bonham to Addington, 3 July 1852.

²⁷ TNA FO 97/98: Bonham to Addington, 3 July 1852.

The aim of the proposed ordinances was above all to avoid damaging relations with China and ensure that trade was conducted in conformity with the treaties, as Alcock emphasised in his letter accompanying his drafts.²⁸

It may be noted here that the novelty of British policies towards the Chinese government of the 'cooperative era' of the 1860s can sometimes be exaggerated, and the conciliatory actions of leading China-based officials in earlier periods may be overlooked. In fact in the 1850s many British officials wished to deal with Chinese officials in ways which supported rather than undermined Chinese authority, and there was a strong desire on the part of the superintendents and many consuls to ensure that British subjects acted in accordance with the treaties.²⁹ Fairbank depicts Consul Alcock in the 1850s, promoting 'the aggressive designs of commercial imperialism' and contrasts the younger consul with his later self, the Minister Alcock of the 1860s who was 'determined to hold the treaty port extremists in check and give the Ch'ing [Qing] administration, with its new foreign-staffed Customs Service, a fair chance to govern China.'³⁰ However, as shown above, Alcock was clear in the early 1850s that British activities in China should be bound by the rules set down in the treaties, and assisted Bonham in trying to create the legal framework to ensure this.

Bonham forwarded Alcock's drafts to the Foreign Office while he was on leave in London, and it was decided in London that a new OIC was needed, rather than the ordinances proposed by Bonham. In the course of its preparation, several drafts were passed to the law officers for their opinions. There was an internal debate over the relative desirability of measures offering the practical expediency of greater authority in the hands of the superintendent and consuls, unhampered by

²⁸ TNA FO 97/98: Alcock to Bonham No 5 10 Jan 1852, enclosure in Bonham to Addington, 3 July 1852.

²⁹ The cooperative policy can be which can be summed up briefly as an agreed aim on the part of the main treaty powers following the Second Opium War to deal with China broadly within a diplomatic framework, in a way that was intended to support the Qing government. See Bickers, *The Scramble for China: Foreign Devils in the Qing Empire, 1832-1914*, p. 207; Mary C. Wright, *The Last Stand of Chinese Conservatism: The T'ung-Chih Restoration, 1862-1874* (Stanford, Calif., 1957), pp. 21-42.

³⁰ John King Fairbank, *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports, 1842-1854* (Stanford, Calif., 1953).

judicial interference from the Hong Kong Court, which was desired by the FO, superintendent, and consuls, and advocates of a system more firmly grounded in established English legal practices and principles, which was the general position of the law officers.

The new OIC, made in 1853, did remedy the particular problem highlighted by the *Lady Mary Wood* case - appeals in treaty cases, and also for breaches of the superintendent's ordinances or regulations, were thenceforth to be decided by the superintendent, not the Hong Kong court. However, Hong Kong remained the court of appeal in civil cases between British subjects where the sum in dispute exceeded \$1000 and, more importantly, retained, concurrently with consuls, civil and criminal jurisdiction, with the effect that in criminal cases where greater sentencing powers were required than were available to the consuls (i.e. imprisonment for twelve months), defendants had to be sent to Hong Kong for trial.³¹ Although it began as a collection of draft ordinances intended to remedy the specific problem of the relationship of the Hong Kong court to consular jurisdiction, the 1853 OIC had by the time of its promulgation become a kind of code for consular jurisdiction, which consolidated the confusingly large number of earlier ordinances made by successive superintendents of trade for the governance of British subjects in China - more than twenty ordinances dealing with British governance in the treaty ports had been passed by the end of 1852. From this point onwards, British governance in China would always be based primarily on such a code, referred to from 1904 as the principal OIC, which was revised and reissued in 1865, 1904 and 1925. When amendments or new provisions were required in the interim, supplementary orders in council were passed. The principal OIC always contained certain core sections providing for the key ingredients of British consular jurisdiction in China: the operation generally of all English laws in China; and the operation of a body of law applicable only in China, contained in the treaties made between Britain and China, created by OIC, or made by the superintendent of trade (his ordinances, notifications or

³¹ 'Order in Council for the Government of British subjects resorting to China, etc., and for the repeal of certain ordinances relating thereto, enacted in Hong Kong between 1844 and 1852', *BaFSP*, vol. 42, pp. 254-76.

regulations, later called king's regulations), which had the effect of limiting, modifying or adding to the body of English law applicable in China.³²

In 1857 the role of minister was given to Lord Elgin but Hong Kong Governor Bowring remained superintendent until 1859, when the British China and Hong Kong administrations (though not the judicial systems) were finally fully separated, with the minister (by then Frederick Bruce) becoming concurrently superintendent.³³ British state governance in China would thenceforth be led by the minister resident at Beijing. Hong Kong's position as bridgehead was, in its administrative aspect, much diminished by the move of Britain's key official in China away from the colony, but the Hong Kong court retained, for a time, an important position in the judicial apparatus involved in governance of British subjects in China. The British Hong Kong and China judicial systems were only comprehensively separated with the creation in 1865 of the SCC, based at Shanghai.³⁴ From 1865 the courts at Shanghai and Hong Kong held separate, parallel positions in the British judicial hierarchy.³⁵ The most important consequences of this reform are discussed later in this chapter and also, in respect of criminal cases, in chapter two. But for now it may be noted that this attempted solution of the difficulties surrounding the Hong Kong court and consular jurisdiction immediately led to new problems, since the Hong Kong and treaty port commercial worlds were so closely intertwined. For example, the SCC and the Hong Kong Supreme Court gave contradictory rulings on the same point of law relating to the bankruptcy of a British firm with operations in both Hong Kong and Shanghai, separate proceedings in respect of which were simultaneously brought

³² It should be noted here that all British subjects were theoretically subject to *English* law in China rather than the colonial law or national law effective in their place of origin. Only criminal offences which were offences in England (and any offences added by treaty or ordinances/regulations) were crimes in China. So a British Indian subject might in theory commit an act in China which was unlawful under the Indian Penal Code but not be prosecuted if the act was not illegal in England or had not been made illegal by treaty, ordinance or regulation.

³³ Keeton, *The Development of Extraterritoriality in China*, vol. 1, p. 235.

³⁴ See article 95 of the OIC of 9 March 1865, in *BaFSP*, vol. 55, pp. 136-75.

³⁵ With a few minor exceptions. For example, in 1877 the Hong Kong court was given by OIC jurisdiction over crimes or civil matters occurring within ten miles of the colony, presumably for reasons of economy. See Sir Richard Rennie, *Instructions to Her Majesty's Consular Officers in China and Japan* (Shanghai, 1885), p. 19. Also, a small link between the courts was established in 1912 when the Hong Kong Full Court was established. A panel of appeal judges was created for the colony, one of whom was the judge of the SCC (then Havilland de Sausmarez).

in both places.³⁶ Before turning to examine the SCC at Shanghai, it is necessary first to look more closely at those officials who represented both the executive and, with the exception only of Shanghai after 1865, the judicial branches of British governance at the treaty ports throughout the treaty century – the consular officers.

The consuls and British governance at the treaty ports

The consuls and their staff based at the treaty ports carried out a broad range of tasks, far more varied and complex than their counterparts in most other countries, largely because of the existence of extraterritoriality in China. Consuls were responsible for implementing policies and enforcing rules for British governance created by the FO and the superintendent-minister, as well as administering English law and ensuring adherence to the treaties with the Chinese government. In addition, consuls and their staff performed many administrative duties, including land (and later also company) registration, formalities related to shipping, making commercial and other reports for the FO and the registration of births, deaths and marriages.³⁷ They also officiated at marriages held at the consulates.

Consuls exercised both criminal and civil jurisdiction in their respective ports. As law enforcers, consuls could be proactive or reactive, according to circumstances. In many cases, a hearing before a consul would begin with a complaint being made to him by the party aggrieved. This could be another British subject, another foreigner, a Chinese person or indeed, as was frequently the case where the treaties were alleged to have been breached, a local Chinese official, usually the daotai (circuit intendant). In the larger ports, such as Shanghai and Tianjin, which eventually had substantial municipal police forces, proceedings were often triggered by the arrest and handing over of the detainee to the consulate (or in Shanghai from 1865 the police court). Consuls might take the initiative and intervene where they saw British subjects engaging in troublesome behaviour, for

³⁶ Norton-Kyshe, *The History of the Laws and Courts of Hong*, vol. 2, p. 132.

³⁷ The important consular role in relation to shipping, and in particular, sailors, is dealt with in chapter two.

example when British subjects in China exploited opportunities to make money which did not align with the British state's own view of British interests. An example which gives a sense of the problems presented by the mercenary approach to commerce often taken on the China coast dates from 1858, while Britain was at war with China. Shanghai Consul D. B. Robertson issued a circular to the British community at Shanghai noting that Chinese soldiers had been transported to Shantou in British ships and warning that British subjects were liable to prosecution for doing so while Britain and China were engaged in hostilities.³⁸

Consuls faced practical problems when trying to maintain order, since in most consular districts there was just one poorly-paid European constable to arrest suspects and supervise the consular gaol, and consuls therefore sometimes had to rely on the Chinese authorities and, more often, the police forces of the foreign municipalities which developed with the growth of foreign settlements and concessions to help keep order.³⁹ At British concessions, although the wages of these police forces were paid by the municipalities out of their taxation revenues, the authority to perform police duties was granted by the consul, sometimes by appointing municipal police as special constables.⁴⁰ Consular approval appears even to have been considered necessary at Shanghai in the early years of the existence of the SMC, showing how the British state's agents in China played an essential role in the expansion of the powers of the Council.⁴¹

Police discipline was maintained in both the concessions and settlements, including the Shanghai International Settlement, with the direct assistance of the British state. In 1906 urgent regulations were issued by Minister J. N. Jordan, in

³⁸ TNA FO 233/4: Circular No. 1, Shanghai, 4 January 1858.

³⁹ Details of the staff of each consulate in 1868 is listed in BPP, HC, *Reports on Consular Establishments in China, 1869*, vol. 69, [c.44], (1870).

⁴⁰ See for example section 16 of the Tianjin Land Regulations of 1866, *HChT*, vol. 2, p. 642.

⁴¹ In the case of Shanghai, just as with many other institutional arrangements relating to the SMC, the legal basis for this procedure is not clear, nor is it clear what legal force it actually had. Nevertheless in 1855, the SMC obtained 'countersignature of the British Consul to instructions for Police under which instructions and power the men in the employment of the Municipal Council are to act.' Zhang Qian (ed.), *The Minutes of Shanghai Municipal Council* (Shanghai, 2002), Vol. 17, p. 230, 24 March 1909. *Minutes of SMC 1854-63*, vol. 4, 28 March 1855, p. 53.

response to a strike by Indians employed in the Shanghai Municipal Police (SMP), making it a breach of regulations, punishable under the 1904 principal OIC, for a British subject to disobey orders, to desert the force or to persuade others to do so.⁴² Further regulations were issued in 1907 for discipline in British concession police forces which contained almost identical provisions.⁴³ By OIC in 1909 control over police in concessions and settlements was tightened further by providing powers for the superintendents of municipal police forces in concessions and settlements to act in a magisterial capacity and deliver judgment summarily over their men if they breached discipline or failed to follow orders.⁴⁴ Again we see the very close relationship between British state institutions and the municipal councils, including the Shanghai Municipal Council, despite the latter's formal status as an international body. This closeness was evident to other foreigners at the time and could be the cause of tensions – the 1909 OIC caused a diplomatic row with the German and American consuls, who interpreted the regulations as a proclamation of British control over the SMP.⁴⁵ The interests of the councils, especially the SMC, and the British state were very closely aligned in the case of the control of Indians in China, many of whom formed a key part of concession or settlement police forces.⁴⁶

While the municipal councils generally employed a mixture of European, Chinese and Indian men as police, it was generally considered necessary to fill the role of consular constable in the ports with a European British subject. However, it was not easy to find suitable recruits on the low wages offered. From Niuzhuang in 1869 Consul W. E. King reported that 'three constables in the course of four years were dismissed for incompetency or drunkenness.'⁴⁷ Although the problem of British subjects engaged in theft and violent crime had apparently subsided by the

⁴² 'Regulation for the Shanghai Municipal Police', 12 October 1906, in *HChT*, vol. 2, p. 1080. See Isabella Jackson, 'The Raj on Nanjing Road: Sikh Policemen in Treaty-Port Shanghai', *Modern Asian Studies*, 46, 06 (2012), 1672–704, for more on the strike and Indians in the SMP generally. See also chapter five of this thesis.

⁴³ *HChT*, vol. 2, p. 1105

⁴⁴ 'British Order in Council amending the China and Corea Order in Council, 1904', 18 October, 1909, section 3(3) in *HCoT* vol. 25 (London, 1909), p. 204.

⁴⁵ TNA FO 228/3413: 'New China Order in Council', unsigned notes.

⁴⁶ See chapter five.

⁴⁷ BPP, HC, *Reports on Consular Establishments in China*, p. 74.

early twentieth century, the problem of scant consular policing resources persisted.⁴⁸ Consul Tours asked the Legation for advice on how, in the absence of either gaol or constable, he was to exercise control over 'ruffians' at Jinan in 1923 and was advised by the Legation that he had three options: appoint locally-based British subjects as special constables who would then have power of arrest; seek assistance from the Chinese authorities until arrangements could be made to transfer the prisoner to Shanghai; or, since seeking Chinese assistance might 'weaken the foundations of extraterritoriality', ask the Japanese consul for help.⁴⁹ This last suggestion was subsequently criticised by superior officials at the Legation, who saw serious objections to enlisting aid from the Japanese.⁵⁰

Japanese consular policing in the treaty ports offers a stark contrast to the British approach. British consular constables were engaged locally by each consulate and in no way constituted a centrally-coordinated 'force'. From the 1880s, the Japanese Foreign Ministry created a centrally-organised and well-staffed police force which operated in China and Korea to maintain order among Japanese subjects, and also played a particularly important role in the fight against anti-Japanese Korean nationalists based in the Chinese treaty ports.⁵¹ Britain instead relied heavily on the assistance of the municipal police forces in the settlements and concessions, particularly the SMP, a state of affairs which drew British officials into a close relationship of inter-dependence with such bodies.

There was often an improvisatory nature to judicial proceedings overseen by the consuls, especially in the first few decades, since consuls generally lacked legal training; most early consular officers were recruited on the strength of their China experience, often gained in the military, or on the basis of personal connections with officials at the FO.⁵² Furthermore, consuls were often required to adjudicate in complicated cases, sometimes based on somewhat imprecisely worded treaties or regulations, which often posed novel and unusual legal and practical problems

⁴⁸ Coates, *The China Consuls*, p. 160.

⁴⁹ TNA FO 228/3168: A. D. P Gascoigne to B. G. Tours, 30 July 1923.

⁵⁰ TNA FO 228/3168: Minute of E. Teichman on Tours to Gascoigne, 2 August 1923.

⁵¹ Erik Esselstrom, *Crossing Empire's Edge: Foreign Ministry Police and Japanese Expansionism in Northeast Asia* (Honolulu, 2009).

⁵² Coates, *The China Consuls*, chapter one.

and also frequently involved Chinese or other foreign parties as complainants and witnesses. Even Harry Parkes, instigator of the *Arrow* incident which led to the Second Opium War, and usually portrayed as endowed with abundant self-confidence, complained of the difficulty of satisfactorily fulfilling the consul's judicial role: when he was consul at Shanghai he referred to the trials he presided over in his capacity as judge as the 'worry of his life.'⁵³

Whether out of legal ignorance or in the name of expediency, consuls sometimes viewed their ambit in maintaining peace and good order quite broadly, and did not necessarily always base their actions on firm legal grounds. The lack of sufficient or effective staff, especially constables, also forced a flexible approach. For example, at Ningbo, due to the lack of a constable, Consul Thom admitted to deciding sentences in criminal cases based on his judgment of how likely a prisoner was to comply, so that more troublesome characters were less severely punished, if at all.⁵⁴ About a decade later at Shanghai British officials can be found to have sometimes leaned in the opposite direction in terms of their strictness towards British subjects there. Baker and confectioner H. E. F. Evans was fined ten dollars in 1856 merely for 'using disrespectful language' to the vice consul. The precise law or ordinance he had allegedly broken in so doing, if indeed there was any legal basis at all for the charge, is not clear from the records. No other charge against the man is recorded, so it would not appear to have been a case of contempt of court.⁵⁵ Later, with the advent of the SCC in 1865, staffed by professional judges, consuls at last had a source of guidance to which they could turn for advice on difficult questions, and they were also from that time onwards periodically issued with fairly detailed instructions explaining various aspects of their legal and other duties. Judges Hornby (1867), Rennie (1885) and de Sausmarez (1915) all issued lengthy documents to consuls which contained instructions to guide them in their judicial duties.⁵⁶

⁵³ Stanley Lane-Poole, *Sir Harry Parkes in China*, (London, 1901), p. 293. For a description of Parkes' character and role, see Bickers, *Scramble for China*, pp. 138-42.

⁵⁴ Coates, *The China Consuls*, p. 22.

⁵⁵ TNA FO 97/106: Shanghai police sheets 1856-7.

⁵⁶ Sir Edmund Hornby, *Instructions to Her Majesty's Consular Officers in China and Japan, on the Mode of Conducting Judicial Business, with Comments on the China and Japan Order in Council, 1865, and the Rules of Procedure Framed under It* (Shanghai, 1867); Sir Edmund Hornby and Sir Richard

Consuls could deal with lesser criminal and civil cases summarily under their magisterial powers, but for cases where a greater punishment was appropriate or cases where money or property of value higher than a certain limit were involved, they were required to hear cases with assessors drawn from British subjects resident in their districts. When the system was first introduced by Superintendent John Francis Davis in 1844, he made it clear that the use of assessors was intended to draw the 'respectable' members of the British community into voluntary participation in the administration of justice. There was no compulsion to serve as an assessor, 'because perfect reliance is placed upon the good feeling of the respectable portion of the British community in China.'⁵⁷ The assessors had no decision-making power in a case, but if they dissented their views were recorded in the record of proceedings (and the superintendent was notified of the fact of their dissent).⁵⁸ Consuls were expected only to refer the most serious cases to the Supreme Courts of Hong Kong, or from 1865, Shanghai, where juries were employed and greater sentencing powers were available. Unsurprisingly, given the lack of legal training and experience of most consuls and the complexity of the cases brought before them, some consular judgments were overturned on appeal, which was initially usually to the Hong Kong Supreme Court and from 1865 the SCC at Shanghai.⁵⁹

Punishment was also somewhat extemporised, in large part owing to the lack of facilities and staff for the incarceration of convicts. Consuls had the power to fine or imprison those convicted of offences. Under the principal OICs, consuls could hand down sentences of up to twelve months in prison when sitting with

Rennie, *Instructions to Her Majesty's Consular Officers in China and Japan, on the Mode of Conducting Judicial Business, with Comments on the China and Japan Order in Council, 1865, and the Rules of Procedure Framed under It* (Shanghai, 1885). The instructions issued by de Sausmarez in 1915 are referred to in TNA FO 228/3413: circular to consuls of 12 March 1925.

⁵⁷ Davis, 'Circular respecting consular jurisdiction', 22 November 1844, reprinted in Tuson *The British Consul's Manual*, pp. 229-32, p. 231.

⁵⁸ See section 3 of Ordinance no. 7 of 1844, in *HCoT*, vol. 7, p. 188; section 6 of the 1853 OIC, in *BaFSP*, vol. 42, p. 260; sections 33-4 of the 1865 OIC, in *BaFSP*, vol. 55, p. 145; section 33 of the 1904 OIC, in *HChT*, vol 2, (1908), p. 849; and section 36(3) of the 1925 OIC, in *BaFSP*, vol. 121, p.121.

⁵⁹ Examples of consular decisions overturned on appeal include 'Keen-Show and others v T. L. Larken', *NCH*, 1 December 1860, (supplement – no page numbers); 'Hatch, Forbes & Co. v Forbes, Graham & Co.', *NCH*, 25 November 1885, p. 608; 'Yu Hi v D. O'Rourke', *NCH*, 19 May 1893, p. 731.

assessors.⁶⁰ In the early years British subjects were sometimes held in the local Chinese gaol when there were no cells available at the consulate.⁶¹ Consul Temple Layton at Xiamen in 1847 reported that he had no gaoler or constable; instead he visited the prison room himself once or twice a day. He also had one prisoner flogged, a punishment not sanctioned by the OICs or ordinances.⁶² In 1869 Consul J. Mongan at Tianjin complained that he was sometimes forced to punish offenders with fines when imprisonment with hard labour would be more appropriate. He found this particularly regrettable in the case of assaults on Chinese, when it was 'highly desirable that the complainant should have ocular demonstration that the guilty parties have been actually punished.'⁶³ At Yantai (Chefoo) the consul reported that more than one prisoner had escaped the gaol because the constable was too busy to oversee it properly.⁶⁴ Although probably not strictly justifiable under any treaty, Chinese were also arrested and detained in consular gaols, pending transfer to Chinese authorities for trial. The British consuls at Shanghai in the 1850s and early 1860s went even further by dealing summarily with large numbers of Chinese accused of petty crimes, who were punished by hard labour under the supervision of the SMC.⁶⁵ In this way Britain's displacement of China's legal sovereignty at times went far further than provided for under the principle of extraterritoriality as outlined in the treaties.⁶⁶

British prisoners sometime served long prison sentences at Shanghai, where a substantial consular gaol was built between 1869 and 1871, or more often at Hong Kong, but this entailed the additional costs and difficulties of transporting prisoners to the colony, so was used sparingly.⁶⁷ Consuls were advised by Judge Hornby in 1867 that imprisonment in China for any lengthy period should be

⁶⁰ Section 71 of the 1865 OIC, *BaFSP*, vol. 55, p152. Section 59 (2) of the 1904 OIC; section 63(2) of the 1925 OIC, *BaFSP*, vol. 121, p130.

⁶¹ Coates, *The China Consuls*, p. 22 (Thom at Ningbo), p. 50 (Sullivan at Xiamen); they were instructed to do so where necessary by Davis, see his circular in Tuson, *The British Consul's Manual*, p. 232.

⁶² TNA FO 228/70: Layton to Davis No. 4, 9 January 1847. Coates, *The China Consuls*, p. 56 has other examples of consular flogging, which he says ceased in 1852.

⁶³ BPP, HC, *Reports on Consular Establishments in China, 1869*, p. 41.

⁶⁴ BPP, HC, *Reports on Consular Establishments in China, 1869*, p. 99.

⁶⁵ Anatol M. Kotenev, *Shanghai: its Mixed Court and Council* (Shanghai, 1925), p. 45.

⁶⁶ For example, at Xiamen: BPP, HC, *Reports on Consular Establishments in China, 1869*, p. 49.

⁶⁷ TNA FO 671/444: memo enclosed in Office of Works to Fraser, 1 June 1920.

considered as equal to punishment of three times the same length in England, because 'the effect of prompt punishment following on crime to be carried into effect as near to the scene of the commission of the crime as possible is far greater as a deterrent than conviction at a distant place.'⁶⁸ Another, and probably greater justification was also given: longer sentences could only be inflicted by judges at Shanghai, so involved the greater cost of sending the accused away for trial or of bringing a judge to the district where the offence was committed. Even after the reforms of 1865, consular sentencing policy thus continued along the lines first introduced by Davis in 1844.

British consuls at some of the larger treaty ports were also involved in overseeing legal proceedings in 'mixed courts', which generally handled legal cases against Chinese where there was a foreigner involved in the case, often but not always in the role of plaintiff.⁶⁹ There were mixed courts at Shanghai, Xiamen and Hankou, but the Shanghai Mixed Court was by far the most significant of these institutions, and handled a large volume of cases, including cases between Chinese subjects in the International Settlement, as well as mixed cases where a foreign individual or body was a party to proceedings.⁷⁰ The mixed court at Shanghai came into being, like so many of the structural arrangements for governance located in the Shanghai International Settlement, as part of attempts to restore order in the 1860s following the unrest caused by the Taiping Rebellion, which had led to the suspension for a time of Chinese government authority in Shanghai and the region around it, and had also resulted in a huge influx of Chinese into the safety of the International Settlement.⁷¹ While the power vacuum had been partially filled in the past in the way outlined above, through the arrogation of powers of summary judgment over Chinese by the British or United States consuls at Shanghai, this was

⁶⁸ Sir Edmund Hornby, *Instructions to Her Majesty's Consular Officers in China and Japan* (Shanghai, 1867), p. 17; and revised and reissued in 1881 by Judge Rennie - Sir Edmund Hornby and Sir Richard Rennie, *Instructions to Her Majesty's Consular Officers in China and Japan* (Shanghai, 1885), p. 16.

⁶⁹ There were mixed courts in other parts of the world where Britain or other imperial powers wielded strong influence, for example Egypt. See Nathan J. Brown, 'The Precarious Life and Slow Death of the Mixed Courts of Egypt', *International Journal of Middle East Studies*, 25, 1 (1993), 33-52.

⁷⁰ Keeton, *Extraterritoriality in China*, vol. 1, pp. 404-5.

⁷¹ Cassel, *Grounds of Judgment*, p. 66.

not deemed acceptable in the early 1860s, and a system more aligned to the contents of the treaties was briefly adopted, whereby Chinese offenders were sent to the Chinese City to be dealt with by Chinese officials, following a preliminary hearing before the British or United States consul. This was soon found to be unsatisfactory, since it was said that many Chinese offenders were not punished or were inadequately punished (in British eyes) by the Chinese authorities.⁷² Both the consuls and the SMC, with its police force representing the front line of law and order in the International Settlement, desired a greater degree of control over the trial and punishment of Chinese offenders, and this was provided by the creation of the Shanghai Mixed Court, which was founded in 1864, and until its closure in 1927 played an important role in the government of the International Settlement.⁷³

The degree to which the Shanghai Mixed Court can be said to have involved the integration of treaty power governments, and the British state in particular, into a joint form of governance in the International Settlement, has not received enough attention in histories dealing with treaty era Shanghai, leading to an insufficient appreciation of the role of the British state in the everyday governance of Shanghai.⁷⁴ The role of the SMC in the court has been emphasised by some writers, but since the key foreign official in the court was the assessor, a foreign consular employee, and most often a British one, the role of foreign states, and in particular the British state, in the development and operation of the Shanghai Mixed Court must not be overlooked. In 1864 British consul Harry Parkes prompted the establishment of the court in the form in which it was ultimately realised, by proposing to the local Chinese authorities and the Municipal Council a scheme whereby a Chinese official and a foreign assessor would sit together to decide

⁷² Kotenev, *Shanghai: its Mixed Court and Council*, p. 46.

⁷³ The Shanghai Mixed Court was succeeded by the Shanghai Provisional Court. See Frederic E. Wakeman, *Policing Shanghai, 1927-1937* (Berkeley, Calif., 1996), pp. 70-2.

⁷⁴ For example, in building an argument for the SMC's autonomy in the realm of policing Isabella Jackson places insufficient emphasis on the role of the British and other consuls in the operation of the Mixed Court. See Jackson, *Shaping Modern Shanghai*, especially p. 115 where she refers to 'the Council's loss of judicial control in the Mixed Court' in the late 1920s. This is somewhat misleading, since although the SMC's influence grew post-1911, judicial control of the Mixed Court was always ultimately in the hands of the consuls.

cases.⁷⁵ The Council had wanted to create an institution in which a municipal employee would sit as foreign assessor, but Parkes rejected this at a meeting of the land renters, of which he was chair and in which the new court was discussed, as contravening the treaties with China. He furthermore commented, as an additional justification for his stance, that the Chinese authorities viewed the SMC as ‘politically speaking, irresponsible.’⁷⁶ The SMC was therefore placed in a subordinate position to consular authority as far as the court’s judicial decision-making was concerned.

The Mixed Court was initially located in a building in the British consulate compound at Shanghai, but members of the SMP were tasked with arresting and delivering Chinese accused of offences to the court for trial.⁷⁷ Later, separate premises were found for the court. The development of the court can best be dealt with in two stages, since the court changed substantially after 1911 when the Qing Dynasty was overthrown. Before 1911, the court was formally a branch of the Qing government’s bureaucracy, and its Chinese judges were appointed by the latter government. After 1911, the court was placed under the control of the Consular Body, who appointed the court’s Chinese magistrates.⁷⁸ Although SMC input and influence increased considerably from 1911, most notably in the operational administration, including financial management, of the court and the prison for Chinese, it is important to note that throughout both periods the court relied on the participation of foreign consuls as assessors, who were responsible for deciding cases with the Chinese magistrate, and could decide cases in ways which went against the wishes of the SMC.⁷⁹ It is furthermore possible to state with a high degree of confidence that the British consulate supplied the foreign

⁷⁵ *Minutes of SMC*, Vol. 2, meeting of 13 April 1864, p. 47; Thomas B. Stephens, *Order and Discipline in China: The Shanghai Mixed Court, 1911-27* (Seattle, 1992), p. 44.

⁷⁶ *NCH*, 29 April 1865, supplement (no page number).

⁷⁷ *Minutes of SMC*, Vol. 2, meeting of 5 April 1865, p. 140.

⁷⁸ Teichman, *Vade-Mecum*, p. 5; Kotenev, *Shanghai: its Mixed Court and Council*, pp. 170-6; Stephens, *Order and Discipline in China*, p. 49; Cassel says the SMC appointed the Chinese judges after 1911, but gives no source and it appears that this must be an error: Cassel, *Grounds of Judgment*, p. 177. In 1912, the senior consul sent a note to the Council informing them of the appointment of the 3rd assistant magistrate of the Mixed Court: *Minutes of the SMC*, vol. 18, meeting of 24 July 1912, p. 297.

⁷⁹ For example, in 1912, the German assessor released a Chinese prisoner against the Council’s wishes; the captain superintendent reportedly described the action as ‘a severe blow to Gaol discipline’. *Minutes of the SMC*, vol. 18, meeting of 11 December 1912, p. 346.

assessor in a far greater number of cases than that of any other foreign power, since British interests were by far the largest part of the foreign presence in Shanghai, and it therefore follows that more cases would involve British plaintiffs or in other ways be held to be of concern to British interests. For at least a part of the period of its operation there was a settled arrangement as to the deployment of assessors, which resulted in British assessors dominating the work of the court: in civil cases, the assessor was usually the consul of the nation interested in the case; in all other cases, a British assessor sat three times a week, a US assessor twice, and a German assessor once.⁸⁰

British state officials were thus central to the operation of the Shanghai mixed court throughout its history. However, although the SMC was not trusted to take control of the court, British and other consular officials frequently exercised their powers in the court in ways which supported the SMC's overall aims with regard to the governance of the International Settlement. For example, they saw that the court enforced municipal bye-laws against nuisances such as noise and punished Chinese government employees from outside the settlement who attempted to extract debts or taxation from Chinese residing within the settlement.⁸¹ British officials also showed the degree to which they were able to import British practices into the governance of the settlement through their dominant position in the court. From 1865, this was British policy, sanctioned by London: when the FO sent Edmund Hornby to China as the first British judge of the SCC, he was instructed to advise consuls in working towards the aim 'of securing, not only uniformity of action in the settlement of cases in which a British functionary takes part, but uniformity of practice in awarding for similar offences in the Mixed Court the like degree of punishment that would be awarded in a purely British Court.'⁸² The procedure which developed in the Mixed Court broadly followed practices in English courts, and furthermore, British assessors were prepared to base their

⁸⁰ Herbert Allen Giles, *A Glossary of Reference on Subjects Connected with the Far East* (Shanghai, 1900), p. 181.

⁸¹ See, for example, cases described in the *SMC Annual Reports* – 1896, p. 46; 1900, p. 323; 1902, p. 37.

⁸² TNA FO 17/433: FO to Hornby, 16 May 1865.

rulings on English case law.⁸³ In a case from as early as 1871, which concerned nuisance caused by a Chinese club and its associated brothels in a neighbourhood near to the French Settlement, the British assessor, Vice Consul Arthur Davenport, gave his opinion that the defendants were guilty in part based on a finding of Lord Ellenborough in an English case which Davenport used as a precedent.⁸⁴ This kind of everyday judicial and administrative practice built the British character of the International Settlement in a way that must have affected the perceptions of those who came into contact with the court and which moreover dovetailed with SMC objectives in creating a space, embodying British socio-cultural norms, deemed suitable for foreign habitation in the International Settlement.

One of the most important powers available to consuls, first given to them in 1844, was the ability to order that a British subject be deported from China.⁸⁵ Deportation was initially viewed by Superintendent Davis as an 'extreme measure', aimed at removing from China persistent offenders when 'the character of the offender is such as to render his continuance in China incompatible with the peace and good order of society.'⁸⁶ But from 1847, as Davis faced the task of preventing confrontations between Britons and Chinese, behaviour which had sparked riots at Guangzhou in 1846, consuls were given additional powers to deport where they had reason to believe that a British subject was likely to commit a 'breach of the public peace' and the person in question could not find security for their good behaviour.⁸⁷ Deportation was used often for frequent minor offenders, despite the expense involved in deporting penniless British miscreants which meant there was pressure from the FO to use the measure sparingly.⁸⁸ Orders for deportation from the treaty ports were often made to Hong Kong, the nearest British territory to China, but this eventually provoked a protest from the Hong Kong Government. Under the 1904 OIC it was made more difficult for the consuls or courts in China to deport British subjects to Hong Kong without the colony's consent.⁸⁹

⁸³ Kotenev, *Shanghai: its Mixed Court and Council*, p. 61.

⁸⁴ 'Re Lao-Ke-Chong', *NCH*, 7 August 1871, pp. 612-3.

⁸⁵ The power was first conferred by section 9 of Davis' ordinance No. 7 of 1844, *HCoT*, vol. 7, p. 190.

⁸⁶ Davis' circular in Tuson, *The British Consul's Manual*, p.232.

⁸⁷ Davis' Ordinance No. 2 of 1847 in *HCoT*, vol. 8, p. 115.

⁸⁸ TNA FO 656/53: Judge George French to FO No 14, 14 October 1880.

⁸⁹ TNA FO 656/106: Judge de Sausmarez to Satow, 27 June 1905.

Disagreements later broke out between Hong Kong and Shanghai over deportation of Indians to the colony from Shanghai.⁹⁰ The view from the colony was therefore often far from being one wherein Britain's China world was conceptualised as part of a larger project with common aims shared by the colony and agents of the British presence at the treaty ports. Instead, the colony's interests were viewed more narrowly and given priority by its government.

Deportation remained a tool for dealing with small-scale career criminals and vagrants through the nineteenth century and beyond, but it was also adopted for use against different kinds of threats in the early twentieth century. In 1904, the Tianjin consul ordered the deportation of the British proprietor of *The China Times*, John Cowen, who had failed to give security for good behaviour for twelve months for having published an article likely to cause a breach of the peace (the article concerned the alleged cruelty of Russian troops in China).⁹¹ In 1906 a number of Indian members of the Shanghai Municipal Police were deported following their participation in a strike.⁹² Indians found guilty of sedition in the 1910s and 20s were also generally deported after serving their sentences.⁹³

An additional means available to consuls to control the activities of British subjects was the passport for travel in the interior of China. From 1842 to 1860, British and other foreign nationals were only allowed to travel a short distance from the open ports. In the case of British subjects this distance was defined in the general regulations published by the British authorities. Following the ratification of the Treaty of Tianjin, consuls began issuing passports for British subjects to travel outside the immediate environs of the treaty ports for the first time. The passport documents issued by consuls in the 1860s contained a declaration by the consul that the holders were 'persons of known respectability', and consuls were warned

⁹⁰ TNA FO 671/437: Charles Denham to HK Captain Superintendent E. D. C. Wolfe, 22 October 1922.

⁹¹ *NCH*, 11 March 1904, p. 473; *NCH*, 10 June 1904, pp1229-32. The judge of the SCC reversed the order since Cowen had not repeated the offence, but was careful not to criticise the decision of the consul in the case.

⁹² TNA FO 656/263: Judge Sausmarez to Consul Fulford at Tianjin, 16 October 1916.

⁹³ See for example, TNA FO 676/34: 'Report of proceedings in HM Consular Court Beijing in the matter of R. v. Fouje Khan, 9, 10 and 17 February 1917'. Also 'Year's Sentence Given 3 Indians in Sedition Case – Hard Labor, Deportation Ordered in Supreme Court,' *The China Press*, 6 July 1927, p. 1.

by Bruce, in a circular which was also published in the *North-China Herald (NCH)*, to be highly selective in issuing passports:

I have to impress particularly on you the necessity of not issuing passports to any British subjects who are not persons whose character, position, and antecedents afford reasonable guarantees for their good conduct.⁹⁴

This approach left marginal British subjects wanting to exercise the new freedom of movement under the Tianjin Treaty in a difficult position. Consul Robert Swinhoe in 1866 required Chinese British subjects who sought passports to give security for their good behaviour, which had the effect of deterring such applicants from going through with their applications.⁹⁵ In the twentieth century, consuls were issued with a series of rules and restrictions regarding the issue of passports to British Indians, as part of the surveillance and control of that group, which is covered in chapter five of this thesis.⁹⁶

From 1844, a basic tool for exercising control over British subjects was put in place with the requirement to register at the consulate. This was not at first rigidly enforced, since Davis gave instructions that, 'respectable parties' need not be troubled excessively by demands to register themselves.⁹⁷ The requirement to register was retained in the first principal OIC of 1853, and was included in subsequent principal orders. Under the 1865 OIC, an annual fee for registration, the level of which varied according to whether the registrant was a 'gentleman' or an 'artisan', was introduced and the requirement was more generally enforced.⁹⁸ For the consul, having an accurate list of the British subjects in his district was useful for a number of reasons, including monitoring and controlling the growth of populations of discharged seamen and other potential undesirables, facilitating service of warrants and summonses, assisting in drawing up lists of assessors or jurymen, establishing the nationality of a person alleged or claiming to be British (and thus under his jurisdiction or protection in any legal action or wrangle with

⁹⁴ TNA FO 228/405: Swinhoe to Hornby, 15 June 1866; 'Consular Notification', *NCH*, 5 January 1861, p. 2.

⁹⁵ TNA FO 228/405: Swinhoe to Hornby, 15 June 1866.

⁹⁶ A. G. Major, *A Compendium of Instructions to H.M. Consular Officers in China*, (London, 1927), p. 109.

⁹⁷ John Francis Davis, 'Circular respecting consular jurisdiction', 22 November 1844, reprinted in Tuson *The British Consul's Manual*, pp. 229-32.

⁹⁸ Coates, *The China Consuls*, p. 160.

Chinese or other foreign authorities), and to ensure that notifications and circulars were seen by all members of the community. Many British subjects were fined for non-registration after 1865 when it began to be more strictly enforced, and there was considerable opposition vented in the press, against what was regarded by some as an unjust 'poll tax.'⁹⁹ Registration 'campaigns,' when those failing to register were summoned before the courts, were undertaken periodically at Shanghai throughout the nineteenth century and into the twentieth. Consuls were also informed in 1916 that it was 'of the greatest importance that all British Indians should be registered' and were told to bring proceedings against any who did not register.¹⁰⁰ As well as ensuring that those who should register did register, the consuls also had to ensure that those who sought to register were in fact entitled to do so, a particularly difficult question in the case of many Eurasians and Chinese British subjects (the latter mostly from Hong Kong and the Straits Settlements), whose requests for registration and protection prompted a large correspondence at all levels of the British state hierarchy.¹⁰¹

Another administrative function carried out by consuls was land registration. This seemingly mundane role is easily overlooked, but it was a highly important means by which the institution of the consulate underpinned the British commercial presence. Consular registration effectively guaranteed the title of British landholders to their land in concessions and settlements in China, and it was thus a more low-key way than the gunboats, so often prominent in histories of the treaty ports, through which the British state ensured that the latter were 'safe and secure bridgeheads' for British expansion.¹⁰² The right to register land at the British consulate was a valuable one, which consuls sometimes denied to Eurasians and

⁹⁹ See, for example, editorial in *NCH*, 8 April 1867, p. 4; letter from 'A. Hartizan' *NCH*, 24 December 1867, p. 426.

¹⁰⁰ Major, *A Compendium of Instructions to H.M. Consular Officers in China*, p. 25.

¹⁰¹ For Eurasians, see chapter four. For Chinese British subjects, see chapter three.

¹⁰² This is Robert Bickers' useful shorthand. Bickers, *Britain in China*, p. 9. There were legal differences between leases in concessions and settlements but the role of the consulate in land transactions was, at least from the point of view of augmenting trust in the system, substantially the same. For a clear explanation of the detailed differences between concessions, settlements and other places of foreign residence, see Robert Bickers, 'British Concessions and Chinese Cities, 1910s-1930s', in Billy K.L. So and Madeline Zelin (eds.), *New Narratives of Urban Space in Republican Chinese Cities* (Leiden, 2013).

Chinese British subjects.¹⁰³ It was arguably the state-backed guarantee of secure title to property which gave British and other foreign businesses the sense of stability and certainty they needed to risk investing substantial capital in building extensive and long-lasting enterprises, most notably those which were housed in the giant temples to commerce which lined places like Shanghai's Bund, buildings which were held up as symbols of foreign, and especially British, achievements in China. Foreign-held property in China was easily mortgageable and transferable and indeed it became highly valuable – many fortunes in Shanghai were founded on property more than trade.¹⁰⁴ All this would most likely not have occurred to anything like the same degree without the security provided by British or other foreign state institutions, in particular without the consulate as a trusted registrar and the courts as a forum for settling property disputes.

The importance of this role was magnified during the numerous periods of upheaval in governance which China went through in the nineteenth and especially the early twentieth centuries. Consuls were told in 1920 to take care to ensure that they upheld the 'indefeasibility of a Title Deed ...otherwise the officials could upset the whole system of land registration in China.'¹⁰⁵ Security of foreign property was of course ultimately backed up by military power, a factor which has often been noted in studies of British involvement in China, but it is important not to overlook the role of state administrative institutions, the infrastructure they created, and the practices of officials within them in creating the basis for British commercial expansion of the nature, and on the scale, which occurred in China, and especially at Shanghai, where in 1911, the British Consulate was responsible for more than three quarters of the total number of registrable land

¹⁰³ See chapter four for Eurasians. In regard to Chinese British subjects, an important case was successfully brought in the Supreme Court for China against the Guangzhou consul general by the Bank of East Asia, a Hong Kong Chinese bank controlled by Chinese British subjects, seeking to reverse the decision of the consul who had, with the backing of the FO, refused to register the bank's title to property in the British concession in Guangzhou. See 'The Shameen Land Transfer Dispute', *NCH*, 13 December 1924, p. 459.

¹⁰⁴ One of the most obvious examples is Thomas Hanbury, who went to China as a fairly small trader but left as an extremely wealthy landowner. See Alasdair Moore, *La Mortola: In the Footsteps of Thomas Hanbury* (London, 2004).

¹⁰⁵ Teichman, *Vade-Mecum*, p. 18.

transactions.¹⁰⁶ Many transactions registered in the name of British subjects were done by British proxies acting on behalf of Chinese or other nationalities, and thus the influence of guarantees of British law and institutions on the development of the treaty ports was more than a purely British affair.

Even more than their counterparts elsewhere in the world, consuls in China were 'jacks of all trades'. They were constantly faced with novel and complex situations and needed to try to understand how to apply English law, the superintendent's regulations, and also circulars and directives from the FO and minister to their varied workload. There was ample room for consuls' own prejudices to influence British official practices in the treaty ports, and this will be evident in the chapters of this thesis which deal with the particular groups of marginal British subjects which grew up at the treaty ports and whose trajectories intersected with British officialdom in various ways. The other British official institution which engaged most closely with British subjects in China was a more specialised one – though one not necessarily any less likely to view marginal British subjects with mistrust and disfavour – the Shanghai-based SCC.

The 1865 OIC and the new British court

A new OIC which set out the legal framework for the creation of the SCC based at Shanghai was passed in 1865.¹⁰⁷ The new system of legal governance thus created was modelled on a formula already in existence in the Ottoman Empire, said to have been prompted in that region by a desire to control lawless British subjects or protected persons from Malta and the Ionian Islands.¹⁰⁸ The FO and superintendent had drawn on policy and practice in the Ottoman Empire in the past in framing ordinances for China and now the FO again drew deeply on

¹⁰⁶ *Minutes of the SMC*, vol. 18, 27 December 1911, p. 178.

¹⁰⁷ Here I will for obvious reasons focus on the court's role in China. For Japan, see Christopher Roberts, *The British Courts and Extra-Territoriality in Japan, 1859-1899* (Leiden, 2013). The court was from 1865 to 1899 officially entitled Her Britannic Majesty's Supreme Court for China and Japan. After the abolition of extraterritoriality in Japan, the court was styled Her Britannic Majesty's Supreme Court for China and Corea until 1911, when following Japan's annexation of Korea, it became simply Her Britannic Majesty's Supreme Court for China until Britain relinquished extraterritorial rights in China and the court was closed in 1943. For simplicity, it is referred to in this thesis as the British Supreme Court for China (SCC).

¹⁰⁸ HL Deb. (3rd series), 17 August 1843, vol. 71, cols. 906-907.

experience from that region: the OIC which provided for the establishment of the court was drafted by the same lawyer, Francis Reilly, who had been employed to draft the recent Turkey OIC; and Sir Edmund Hornby, who was judge of the British Supreme Consular Court at Istanbul, the principal British court in the Ottoman Empire, from 1857 to 1864, was appointed as the first judge of the new court at Shanghai.¹⁰⁹ While in London, Hornby also assisted in the drafting of the new China OIC.¹¹⁰ The choice of Hornby was made by the FO precisely because of his experience in the Ottoman Empire, and he was offered an exceptional salary (£3500 per year), higher than that of the chief justice of Hong Kong, in order to secure his services. In the correspondence between Hammond of the FO and Bruce (minister for China) over the establishment of the court it was, somewhat surprisingly, Hammond in London who pushed for more generous terms for the judge, arguing that Bruce had underestimated the remuneration Hornby would require in China, and stressing the value of Hornby's experience: 'Hornby's case should be dealt with specially, as it is of great consequence to have the new system in China well started, and he has seven years experience of it.'¹¹¹

It is worth considering the way in which the FO approached the creation and management of this new institution in China within the context of the existing circulation of ideas and practices to and from China across British imperial networks. In addition to their naturally strong ties to Great Britain, the British in the Chinese treaty ports were closely linked to British India through commerce, especially the opium trade, and also through the circulation of personnel, business practices and certain cultural characteristics, such as language, architecture and organisation of social life.¹¹² Linkages of all kinds between the colony of Hong Kong and the treaty ports were naturally also very strong. However, connections

¹⁰⁹ The Ottoman Empire was used as a model as early as 1847 – see Davis' Ordinance No. 2 'for the better maintenance of order and the repression of crimes among British subjects in China', in *HCoT* vol. 8, pp. 115-7; Reilly – see TNA FO 83/2251: FO to LOs 18 July 1864; Hornby - G.R. Berridge, *British Diplomacy in Turkey: 1583 to the Present; a Study in the Evolution of the Resident Embassy* (Leiden, 2009), p. 82; Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, 2010), p. 124.

¹¹⁰ Sir Edmund Hornby, *Sir Edmund Hornby: An Autobiography* (Boston, Mass., 1928), p. 193.

¹¹¹ TNA FO 17/406: FO (Hammond, private) to Bruce 23 Sept 1864 and FO (Hammond, private) to Bruce 23 October 1864.

¹¹² Bickers, *Britain in China*, pp. 76-77.

based on official channels clearly could, through policy, be directed or changed when it was thought expedient to do so. In the case of British justice in China, the FO very deliberately chose to drastically reduce the strength of links to Hong Kong and to transfer practices and personnel from another area, the Ottoman Empire, where Britain had operated a consular court system with its own supreme court for a number of years. Pär Cassel has argued that both the SCC and the Shanghai Mixed Court were 'products of a peculiar institutional environment that owed much to Chinese concepts of law and legal institutions.'¹¹³ While there may be some truth in this statement in the case of the Mixed Court, in which Chinese and foreign officials together presided over cases involving Chinese defendants in Shanghai, in relation to the SCC it is difficult to reconcile this claim with the lack of evidence in the British archive to support it. The only official closely involved in the creation of the SCC who had any experience of China was Minister Frederick Bruce, and although he was consulted by the FO his influence was not great. Nor is it clear how the SCC can be said to have subsequently been shaped to a significant degree by an institutional environment of the kind suggested by Cassel. British experiences in the Ottoman Empire were by far the most influential factors which shaped the OIC through which the court was created, and later principal OICs did not depart from it in any fundamental way.

After Hornby, subsequent judges would also be transferred from the Ottoman Empire, from other parts of the world where the FO oversaw extraterritorial courts, such as Siam, or indeed from British colonies, such as Sierra Leone, but not from Hong Kong.¹¹⁴ Some judges were previously lawyers who had made their careers at the Shanghai bar, showing that there was no consistent policy of bringing personnel in from outside China, while others had worked their way up through the ranks of the consular service; but neither the Shanghai bar nor the consular service were workplaces where Chinese concepts would realistically have projected much influence on the professional lives of those who became judges,

¹¹³ Cassel, *Grounds of Judgment*, p. 63.

¹¹⁴ For example: Judge George French from Sierra Leone (see *NCH*, 20 Dec 1877, p. 574), Judge Havilland de Sausmarez from the Ottoman Empire (see, 'The Supreme Court', *NCH*, 30 December 1904, p. 1492), Judge Skinner Turner from Siam (see, 'The New Assistant Judge', *NCH*, 4 December 1915, p. 693).

and in any case it was more common for judges to be transferred from outside China.¹¹⁵ There is evidence of the influence of attitudes and practices from British India, which are discussed further in chapter five, but this was not transmitted through formal institutional connections. Britain's China and India worlds were not closely linked in any formal sense through law, unlike in other areas, such as the military and policing, where connections were stronger.¹¹⁶ Whereas British India had its own distinct legal system, comprising various unique measures including the Indian Penal Code and also various mechanisms providing for legal pluralism, British law in China was, at least on paper, far more closely tied to English law, with comparatively little formal modification.¹¹⁷ There was no movement of judicial personnel from India; in addition to the lack of institutional ties, the pay on offer in China was probably insufficient to entice anyone, since even Hornby's attractive salary was less than that of a puisne judge in India.¹¹⁸

The new judicial system created by the 1865 OIC, with the SCC at Shanghai at its head, would endure basically unaltered for the rest of the treaty century. It established, at least in theory, a parallel British hierarchy in China under which consuls at the treaty ports were, in their judicial role, subordinate to the judge at Shanghai. The judicial role of the minister was limited to confirming or commuting capital sentences, and mitigating or remitting punishment in other cases where the judge recommended he do so.¹¹⁹ The great practical change brought about by the establishment of the court at Shanghai was that serious crimes and important civil cases could now, in most cases, be tried closer to the places where they were committed or where the parties to the proceedings were based. The new court exercised all first instance jurisdiction for the port of Shanghai and judges of the court could also hear important cases in the other ports when necessary. It was

¹¹⁵ For example, Nicholas Hannen, former barrister ('Death of Sir Nicholas J. Hannen', *NCH*, 2 May 1900, p. 766). Hiram S Wilkinson started his career in the Japan consular service but became chief justice of the SCC in 1900. 'The Retirement of Sir Hiram S. Wilkinson', *NCH*, 7 April 1905, p. 9.

¹¹⁶ Thomas R. Metcalf, *Imperial Connections: India in the Indian Ocean Arena, 1860-1920* (Berkeley, Calif., 2008), pp. 130-3.

¹¹⁷ For law in British India, see Elizabeth Kolsky, *Colonial Justice in British India* (Cambridge, 2010). Practice was a different matter. See chapter five in particular for the ways that judges adapted the law to deal with Indian British subjects in China.

¹¹⁸ TNA FO 17/406: FO Hammond (private) to Bruce, 23 October 1864.

¹¹⁹ TNA FO 17/944: FO (Russell) to Wade, 16 May 1865.

the court of appeal from the consular courts – now styled provincial courts – in the other treaty ports and the chief judge heard appeals from first instance decisions in Shanghai made by the assistant judge.¹²⁰ Since Shanghai was the most important centre of British settlement in the treaty ports, most cases would arise there anyway, but if necessary, the judge went to the other ports to try cases, for example if a British subject were accused of murder. Appeals from the SCC lay to the Privy Council in London. Cases arising in China would only be tried at Hong Kong if the judge of the SCC at Shanghai decided that the case should be transferred to the colony for trial; otherwise it was specifically decreed that ‘all jurisdiction, power, and authority’ of the Hong Kong court ceased in China and Japan from the commencement of the new OIC.¹²¹

In addition to the new judge, other senior personnel of the court were provided for in the OIC of 1865. There was to be an assistant judge and a law secretary, who would both be able to preside alone over cases. The law secretary was the court registrar, sat as a summary judge in cases of minor criminal charges, and could also hear civil cases. The first holders of these roles were selected by Hornby and brought to Shanghai. The first assistant judge was Charles Goodwin, a barrister and a noted scholar, who had contributed to the influential publication *Essays and Reviews*, but had no prior foreign official experience.¹²² The law secretary, John Fraser, was formerly employed at a consular position in the Ottoman Empire, where he had come to Hornby’s attention.¹²³

The OIC of 1865 called for male British subjects resident in mainland China to act as jurors for the first time since the opening of the treaty ports.¹²⁴ The SCC was required to sit with jurors in important cases, whether proceedings were held at Shanghai or at another port, but the old rule whereby consuls sat with assessors in

¹²⁰ Until 1925, when the Shanghai Full Court was established to hear such appeals, for which the chief justice of Hong Kong was brought to sit on a panel with the Shanghai judges.

¹²¹ OIC of 1865, section 160, *BaFSP*, vol. 55, p172.

¹²² Victor Shea and William Whitla, (eds.) *Essays and Reviews: The 1860 Text and Its Reading*, (Charlottesville, 2000).

¹²³ Hornby, *Autobiography*, p. 193.

¹²⁴ Important cases relating to crimes or civil disputes in China had however been tried by juries at Hong Kong. Juries were also provided for under the rules governing the court at Guangzhou in the pre-treaty era.

their courts hearing lesser cases was not altered. Under the 1865 OIC, only five jurors were required (it was usual in England for a jury to comprise twelve members; the Turkey OIC of 1857 specified six).¹²⁵ Under the 1904 OIC, the number of jurors was increased to twelve in cases where the case concerned a capital offence.¹²⁶ To qualify to serve on a jury in 1865 a British subject had to earn a gross annual income of \$250 or more, be able to speak and read English, and be free from conviction for any serious crime. The *NCH* considered these qualifications to be rather low, and this was presumably done deliberately, in view of the relatively small size of the British population in China, to ensure that there were enough names on the jury list.¹²⁷ To put the jury qualifications into context, in 1869 British consular constables, who were considered by consuls to be very poorly paid, typically earned about \$50-70 per month, and the lowest class of European working in the Chinese Maritime Customs was reported to earn \$76.50.¹²⁸ Both would therefore have easily qualified for jury service on grounds of income.

The new system clearly allowed for greater oversight by the FO of the judicial body responsible for China, and so made possible a tightening of British governance which could, in theory at least, bring consular jurisdiction more into line with executive priorities and policies; in particular it could assist in maintaining the cooperative approach to relations with the Chinese government which was in the ascendant in the 1860s. Hornby was sent out to Shanghai with instructions from the Foreign Secretary which tend to support this interpretation: he was to act as a legal advisor to British government representatives in China, as the law officers did for the British government in London; he was also to 'be guided by' the opinion of the minister with reference to any course of action which could influence relations between Britain and China. The FO also gave Hornby instructions which

¹²⁵ Section 30 of the 1865 OIC; James Oldham, 'Special Juries in England: Nineteenth Century Usage and Reform', *The Journal of Legal History*, 8, 2 (1987), 148-66, p. 157; Great Britain. 'Order in Council providing for the more efficient exercise of power and jurisdiction over British subjects within the Dominions of Turkey, by the judge of the Supreme Consular Court at Constantinople', 27 August 1857, in *BaFSP* vol. 47, (London, 1857), p. 575.

¹²⁶ Section 27 of the 1904 OIC, *HChT*, vol. 2, p. 905.

¹²⁷ *NCH*, 29 July 1865, p. 118.

¹²⁸ BPP, HC, *Reports on Consular Establishments in China*, 1869, p. 49.

suggest that an element of the civilising mission existed alongside the new emphasis on cooperation: as already mentioned, he was ordered to assist consuls in bringing the Shanghai Mixed Court's practices closer to those practiced in British courts.¹²⁹ Hornby was granted the privilege of communicating directly with the Secretary of State whenever he felt necessary, and was told that if at any time he should believe that a new OIC were required, he should prepare a draft and send it to the FO.¹³⁰ The judge was in this way placed in a position of some autonomy in relation to the Legation, with a clear means open to him, not only to decide cases independently, but also to influence the direction of British governance in China.

In many ways it seems that the court was seen as a success from the point of view of the Legation and the FO. The fact that no major reform altering its role was made in the years following its opening, right up to the abolition of extraterritoriality in 1943, points to this conclusion, as well as suggesting that the FO recognised the usefulness of the court over the longer term. The new institution did put an end to some of the problems associated with the Hong Kong court, in particular its tendency to overturn consular decisions on legal technicalities. This mitigated a source of tension with the Chinese authorities and the court was also more effective in dealing with criminal cases involving British problem populations, especially 'rowdies' against whom Hornby launched a crackdown early on in his tenure. However, the introduction of another, independently-minded, power holder into the British system of governance, and based at Shanghai rather than Beijing, meant that there continued to be scope for disputes to emerge between the executive and judicial branches in China. Hornby claimed that the flexibility he allowed himself to deal with issues brought before him was overtly sanctioned by the FO, presumably because the necessity of greater powers being exercisable by men on the spot, as had repeatedly been called for by Minister Bruce, had been recognised, and it was probably assumed that it was safe to confer wider powers on a legally-qualified official of Hornby's experience.¹³¹

¹²⁹ TNA FO 17/433: FO to Hornby, 16 May 1865.

¹³⁰ TNA FO 17/433: FO to Hornby, 16 May 1865.

¹³¹ Hornby, *Autobiography*, p. 260.

But this flexible and independent approach, while useful in dealing with crime and disorder, could be at odds with the emphasis on correctness, following international law and respecting the treaties in dealing with the Chinese government, which was called for by the proponents of the cooperative policy espoused by British ministers in the 1860s. In a despatch on the subject of the extension of the Hong Kong authorities' jurisdiction over the waters and islands in the vicinity of the colony, Hornby told Alcock:

Your Excellency is already in full possession of my views of the inexpediency of treating with the Chinese government, as if that government was conducted upon the same principles as those of civilized states and furnished the same guarantees of good faith and reciprocal action as the governments of Western nations furnish.¹³²

Hornby also disagreed vehemently with arguments from Minister Alcock that the Chinese had a right under the treaties to demand joint trials presided over by both a Chinese official and the British judge in civil cases where one party was Chinese.¹³³ The aims of improved relations with the Chinese were thus not comprehensively assisted by the creation of the SCC at Shanghai.

The establishment of the SCC at Shanghai and the embedding of its staff in the Shanghai British world had other consequences, of a perhaps less immediately obvious kind, for the nature of the British state's project of governance in China. Hornby and subsequent judges were supportive of the Shanghai Municipal Council (SMC), and closely involved with it in various ways. Hornby was elected Commandant of the Council's Shanghai Volunteer Corps, described by Robert Bickers as 'a key element in the theatrical colonial posturing of the Shanghailanders', shortly after arriving at Shanghai.¹³⁴ His prejudice against the Chinese government meant it was natural for him to support the SMC at a crucial

¹³² TNA FO 656/23: Hornby to Alcock (draft) No. 21, 28 December 1868.

¹³³ TNA FO 228/484: Hornby to Clarendon, 27 July 1869. The copy in the legation file is annotated with numerous exasperated comments by Alcock written in response to Hornby's assertions. See also Pär Kristoffer Cassel, *Grounds of Judgment*, p. 70, for a discussion of this disagreement.

¹³⁴ 'Volunteer Meeting', *NCH*, 29 July 1865, p. 118. Robert Bickers, 'Shanghailanders: The Formation And Identity Of The British Settler Community In Shanghai 1843–1937', *Past & Present*, 159, 1 (1998), 161–211, p. 197. Other aspects of the history of the SVC also support the argument that the British state supported the SMC in many ways. For example, the British government supplied ammunition for practice purposes to the SVC free of charge, and senior army officers were sent from Hong Kong to inspect the force to assure its capability: *SMC Annual Report for 1900*, pp. 3–4.

moment in the development of the Shanghai International Settlement, when the new Land Regulations (which provided the legal basis for the SMC's existence and functions) were being considered in 1866. Hornby assisted in drafting the new Regulations, and urged the FO to approve them, warning that since the Chinese government was 'unable, as well as under the circumstances utterly unfit' to oversee law and order in the International Settlement, the British government would be required, at great expense, to undertake a large-scale policing role if the SMC was not given adequate support.¹³⁵ This highlights the fact that the SMC was already in the 1860s providing services which complemented the British state's own project of governance to a considerable degree. It was clear that Hornby's sympathies and outlook on the issue of the SMC lay more with the Shanghai British commercial community who controlled the council than with the consuls and the Legation. Hornby went as far as to write privately in April 1866 to Reilly and Hammond at the FO in London, introducing James Hogg, recently-retired Vice-Chairman of the SMC, in a clear attempt to ensure that the SMC viewpoint was heard by the FO when considering the new regulations. Hornby told Reilly he had given Hogg a note to Hammond, 'as I am most desirous that both he and you should get a non-official view of the questions here'.¹³⁶ Hornby's note was written at a time of great tension between the Shanghai consul, Charles Winchester, and the SMC. In April 1866, only a few weeks before Hornby's supportive letter about Hogg, Winchester was so outraged by the SMC seeking to prevent the Chinese government taxing Chinese residents in the Settlement that he walked out of a meeting of the land renters of which he was the chair and suggested that it might be necessary to call for the intervention of British naval forces to prevent a breach by the SMC of British treaty obligations.¹³⁷ When Winchester asked him for advice on the issue, Hornby supported the SMC's desire to keep Chinese authority out of the Settlement by suggesting that the best course would be for the SMC to collect any taxes on the Chinese government's behalf.¹³⁸

¹³⁵ TNA FO 17/944: Note by committee of land renters, 22 January 1866; Hornby, *Autobiography*, p. 205; TNA FO 17/453: Hornby to FO No. 5, 8 February 1866.

¹³⁶ TNA FO 17/944: E. Hornby to F. Reilly 17 May 1866.

¹³⁷ TNA FO 656/12: C. Winchester to E. Hornby, 19 April 1866.

¹³⁸ TNA FO 656/13: E. Hornby to C. Winchester, 19 April 1866. The issue of Chinese tax collection in the Settlement arose again in later years, with the SMC continuing to resist attempts by Chinese officials to tax Chinese residents. See Bickers, *Britain in China*, pp. 126-7.

After Hornby retired in 1876, the FO downgraded the post of judge somewhat by reducing the pay and, in 1891, amalgamating the position of chief justice of the SCC with that of Shanghai consul general, although this latter move was deeply unpopular with non-official Britons and was reversed after only six years.¹³⁹ No subsequent judge seems to have had quite the influence or status that Hornby held as the inaugural office holder, or was prepared to put himself so much at odds with the minister and consuls as Hornby. His inbuilt sense of his own importance and abilities, so evident in his autobiography, no doubt contributed to this. In the longer term it appears that the court and judge's place in the British state hierarchy in China was a little more firmly situated beneath that of the Legation and minister, but relations between the judges and the Shanghai commercial community and the SMC were often still very close. Judges Rennie and Hannen had practised at the Shanghai bar before obtaining judicial appointments, so were fully embedded in the Shanghai commercial world before becoming British officials. Later judges worked closely with the SMC in ways which increased the entanglement of the project of governance of the British state with that of the SMC. Chapter five, dealing with Indians, describes in detail the way in which the SCC in the early twentieth century, and especially Judge de Sausmarez, worked with the SMC to discipline Indian policemen, often in ways which were improvised to meet the particular needs of the Council and involved the stretching and adaptation of the judge and the court's role. Contrary to the intentions of British policy in the 1860s under Ministers Bruce and Alcock, it is clear that the establishment and development of the court as a state institution at Shanghai contributed to the emergence of the International Settlement as a colonial space governed through a set of closely-collaborating structures, dominated by the SMC and British state institutions until at least the 1920s.

Other major foreign powers in China set up their own courts, including the United States, which established its court for China much later, in 1906.¹⁴⁰ Expertise was

¹³⁹ 'The Changes at the Consulate', *NCH*, 3 April 1891, p. 389.

¹⁴⁰ The other noteworthy example is Japan. See Barbara Brooks, *Japan's Imperial Diplomacy: Consuls, Treaty Ports, and War in China, 1895-1938* (Honolulu, 2000).

transferred from other colonial jurisdictions to do so: the first judge of the US Court for China, Lebbeus Wilfley, was moved to China from Manila, where he had served as Attorney General for five years. The US court was established on similar lines to the British in that its decisions were made based on a combination of US federal law and edicts of the US minister in China. On his arrival, the first US judge engaged in a crackdown on disreputable American elements somewhat similar to Hornby's, although more severe, and with less support from the consular body. In contrast to the warm relations which generally existed between the British judge and local British commercial interests, the US interests in China which were targeted by the court were sometimes influential ones, and they counter-attacked, and made considerable trouble for Judge Wilfley, resulting in his resignation in 1909.¹⁴¹ Because of the later development of the structures of other major foreign powers, and because the dominant culture of the SMC was British (following from the nationality of most of its senior- and middle-ranking staff), and also because British interests in Shanghai were much greater – whether measured financially or in terms of population size – no other foreign power's court or officials were bound up so closely in the work of the SMC and the governance of the Shanghai International Settlement as the SCC and British officials were.

Conclusion

Complex, costly and long lasting British state institutions were built in China, within a context often characterised as 'informal empire', which were comparable in many ways to those created in parts of the world governed directly from the Colonial Office and famously coloured pink on world maps.¹⁴² This chapter has demonstrated that the British state was a key part of Britain in China in ways that go beyond the high-level interactions of foreign ministries or gunboats sailing up the China coast. The Opium Wars and the treaties which followed did not merely open China to foreign trade, they also meant that China was opened to the British state, its institutions and agents. Stoler and McGranahan have argued that 'Agents

¹⁴¹ Eileen P. Scully, *Bargaining with the State from Afar: American Citizenship in Treaty Port China, 1844-1942* (New York: 2001), pp. 110-124.

¹⁴² There is in fact plentiful evidence of the minimal colonial state which existed under 'formal' empire in many parts of Africa. See Crawford Young, *The African Colonial State in Comparative Perspective* (New Haven, 1994).

of imperial rule have invested in, exploited, and demonstrated strong stakes in the proliferation of geopolitical ambiguities' and this can certainly be seen to have been the case in the Chinese treaty ports.¹⁴³ British state agents gradually created a large and complex structure of laws and institutions aimed at regulating, surveilling and punishing British subjects in China and which also served the no less important role of supporting British commercial undertakings as well as other institutions of empire in China, such as the British municipal councils and the SMC. An analysis of British involvement in China which gives these institutions due weight draws attention to unsatisfactory aspects of the term 'informal empire', or at least suggests that that term needs careful handling if we are not to lose sight of the important, wide-ranging and long-lasting role of governance undertaken by the British state, and the important implications of that role, even at the margins of empire. The case of treaty port China, and perhaps also that of other countries where extraterritoriality was practised, suggests the need for ways to conceptualise empire which do not push us towards thinking in terms of mutually exclusive alternatives. If we keep the concept of space based on imperial networks firmly in the foreground, as proposed in the introduction to this thesis, this is more easily done, since it allows us to move away from a fixation with sovereignty over bounded entities, and to give due weight to the 'geopolitical ambiguities' referred to by Stoler and McGranahan, which were empirically a not uncommon feature initiated, facilitated and perpetuated by the British state in this period.

This chapter has shown that the creation of British institutions in China and their interaction with institutions elsewhere is best considered alongside existing work on imperial networks and the circulation of ideas and practices. In doing so, we can add to our understanding of the way connections were created, shaped and broken, sometimes in a contest, sometimes in a collaboration, between both official and unofficial actors distributed across a variety of imperial spaces. This will be developed further in chapter five of this thesis in particular, which covers Indians in China. British India and China were connected through significant circulations of people, ideas, goods and capital and also through administrative

¹⁴³ Ann Laura Stoler and Carole McGranahan, 'Refiguring Imperial Terrains', *Ab Imperio* 2 (2006), 17–58, p. 26.

communications, but in uneven and sometimes unexpected ways. Giving the British state a larger place within studies of British expansion in China therefore provides a more accurate picture of the interconnections between the treaty ports and other parts of the British empire.

A related finding which emerges from a deeper analysis of state activities is the fact that the imperial state was not itself monolithic. Tensions existed as a result of the interaction and overlap of imperial institutions based in zones where different colonial structures and practices existed along with different policy priorities and requirements. For example, the respective administrative requirements of Hong Kong and the treaty ports were not always attuned from quite early on, and this divergence only increased over time, creating divisions between British officials which were not easily resolved. This is a theme which is explored further in other chapters of this thesis.

A more specific finding of this chapter relates to the SMC and the Shanghai International Settlement. The existence of many of the connections between the British state and the SMC discussed in this chapter has been underappreciated, which can lead to the impression that the British state had only limited interest or involvement in the running of the International Settlement, tolerating it but neglecting it, at least until the moment of retrenchment and modernisation of Britain's China policy beginning in the later 1920s, when steps were taken to reign in the activities of British settlers.¹⁴⁴ The British state provided the legality relied upon by the SMC and the International Settlement in many areas: in land registration, through the creation and operation of the Mixed Court, through port regulations and by providing the means to control the SMC's police force. This was a deep engagement, through institutional connections which developed in their extent and importance at least into the first decade or two of the twentieth centuries, and which could be described as constituting a hybrid colonial state, since these connections went to the heart of the exercise of foreign power at Shanghai. The following chapter looks more closely at the reasons behind the

¹⁴⁴ For that process, see Bickers, *Britain in China*, chapter four.

founding of the key British institution located at the latter place, the SCC, which was created primarily to deal with British violence in China, but developed to influence the treaty ports, and especially Shanghai, in a number of ways.

Chapter Two - Tackling Transgressive Behaviour: British crime and violence in China

The foreigner becomes more audacious, and the scum of the earth are attracted to a country where they can commit excesses without restraint.¹

In the previous chapter I examined the institutional expansion of the British state into China from 1842 onwards. My principal argument was that the state was present in China, by virtue of various institutions, personnel and practices, in a far more complex and extensive form than is suggested by a focus on China as an example of 'informal empire' or on the state's most prominent actions in the diplomatic or military spheres. In this chapter I will turn to examine why a large part of that apparatus of institutions was thought necessary in the first decades of the opening of the treaty ports: I argue that this was in order to control deviance in the form of crime, largely committed by lower class Britons. The need to control crime and criminals, particularly those responsible for violent crime inflicted on the Chinese, will be shown to not only have shaped the initial state institutions which were created following the opening of the treaty ports in 1842, but also to have prompted the expansion and development of state structures in various ways over the ensuing quarter century, the period of the most important changes in British state structures in China.

In some respects, the focus outlined above offers an alternative view of the British state to that of an imperial aggressor, responsible only for inflicting war, upheaval and imperial domination on the Chinese state. Such a narrative overlooks certain aspects of the role played by the British state in China. Consular jurisdiction over British subjects under the extraterritorial rights granted by treaty was a key aspect of the British state's expansion into China, but remains understudied. Although Pär Cassel has done much to add to our understanding of extraterritoriality as more than a tool of imperial control imposed on China from outside, there remains a lack of work which examines in detail British aims in establishing the system of

¹ Frederick Bruce 1858 to sister, quoted in Jack J. Gerson, *Horatio Nelson Lay and Sino-British Relations, 1854-1864*, (Cambridge, Mass., 1972), p. 211.

consular jurisdiction, and which assesses the outcomes of the structures which were put into place for that purpose.² As already indicated in chapter one, the state did not just force China open through violence and then withdraw to leave expansion in China as a private enterprise venture. Both Eileen Scully and Robert Bickers have shown how tensions between metropolitan governments and settlers in China emerged and prompted state actions, focussing largely on the early twentieth century.³ This chapter will develop similar themes, but focus on an earlier time period, and in addition will point out that tensions and conflicts of interest emerged also between different agents of the British state involved in treaty port China. This chapter will therefore add to our understanding of the complexity of the British state's involvement in China.

Despite the shift of emphasis from state-initiated violence and aggression, the aim of this chapter is not to argue that the British state's presence in China was therefore somehow less 'imperial'. In expanding its institutions in China, albeit often with the principal aim of controlling British violence and other crime, and mitigating the effect this had on relations with China, the institutions and practices of the British state will nevertheless be seen to have contributed to the development of colonialism in the particular form which it took, and in which it was experienced, in China in the treaty port era.⁴ This chapter is therefore positioned in close relationship to work which views the British involvement in China as a part of the wider phenomenon of British colonial expansion elsewhere in the nineteenth and early twentieth centuries, by addressing colonial relations and the way they shaped the places where they were enacted.⁵ Many scholars working on nineteenth- and twentieth- century colonialism have produced work which has complicated our notion of the colonisers, and made clear that the latter

² Cassel, *Grounds of Judgment*.

³ Scully, *Bargaining with the State from Afar*; Bickers, *Britain in China*.

⁴ In some ways, this echoes the work of James Hevia, who refers to 'deterritorialising' and 'reterritorialising' practices conducted by British actors in China. However, I am not convinced that this somewhat abstract theoretical framework adds significantly to our ability to understand these complex processes. See Hevia, *English Lessons*.

⁵ Those who examine British expansion in China within a British colonial context include Robert Bickers, James Hevia and Jürgen Osterhammel. See Bickers, *Britain in China* and *Empire Made Me*; Hevia, *English Lessons*; Osterhammel, 'Britain and China, 1842-1914', in Porter and Louis (eds.), *The Oxford History of the British Empire: Volume 3, The Nineteenth Century*.

were most certainly not a homogenous group in various settings, with factors including conceptions of race, class and gender all serving to differentiate among them, often in a complex and interwoven fashion which was intimately connected to the management of relations between colonisers and colonised.⁶ Here I will add to this work by showing that a project of governance aimed at disciplining largely lower class British subjects nevertheless played a part in ordering treaty port China as a colonial space, in which asymmetrical relations were predicated also to a large extent on notions of the racial difference between Europeans and Chinese.

Most of the British subjects whose violence or destitution in the 1840s to the 1860s earned them the status of problem population, and labels such as 'rowdy', 'scum', 'blackguard' or 'bad character', were non-élite 'white' Britons from the British Isles, often with a seafaring or military background.⁷ There were of course also cases of violence and other crime perpetrated by Britons who were more prosperous or socially less marginal in relation to official élites. Individual cases involving such people sometimes prompted official responses but did not generally create the same levels of alarm. Whiteness was rarely commented on or made an issue of in the early decades of the treaty century. In this chapter the concept of race can be seen to have been largely unexpressed in discourses concerning those committing violence and criminality, but that does not suggest its irrelevance as an organisational category in official minds – whiteness was the default, or norm – and it is clear in the other chapters dealing with different marginal groups, where the idea of race played an overt part in official discourses, that the members of other groups were inherently viewed as problematic based in part on notions of racial difference. 'White' was a term which was less commonly-used than today, but we can reasonably assume that when British officials in this context referred to men as 'European', or indeed often when they failed to label a British subject's ethnicity at

⁶ For China, see Bickers, *Empire Made Me*; more generally, see Cooper and Stoler, *Tensions of Empire*; much work has focussed on India, especially Harald Fischer-Tiné, *Low and Licentious Europeans: Race, Class, and 'White Subalternity' in Colonial India* (New Delhi, 2009).

⁷ No aggregated statistics are obtainable but this conclusion is drawn from records of deportations in the archives (especially FO 656) and court cases published in the *North-China Herald*, based on the assumption that names can generally be relied on as broadly indicative of geographical origin, and also resting on the tendency of officials and reporters to comment on the skin colour, origin or religion of subjects who were not 'white'.

all, they did so because they held mental conceptions of a category of shared ethnicity which corresponds fairly closely to the present-day category usually designated by the word 'white'. Ideas of race were clearly relevant in court cases where British subjects were accused of violent crimes towards Chinese, as is discussed towards the end of this chapter.

The chapter is focussed on the period 1842 to around 1870, and proceeds broadly chronologically. It begins with an examination of the basic framework deployed from early on to maintain order over the population of lower class Britons in China, especially seamen, who were the group most often subjected to measures designed to deal with violence or other crime. I then go on to show how, in the midst of disorder and upheaval in China caused by war and rebellions, major changes were made in the 1850s and 1860s to the means of dealing with criminal behaviour of British subjects. This took place under Minister and Chief Superintendent of Trade Frederick Bruce, and culminated in the creation of the new institution of the SCC at Shanghai in 1865. Here I will show how concerns about controlling groups of 'rowdy' British subjects, who at this point became identified more clearly as a distinct problem population situated in local conditions, played a key role in this crucial moment for the expansion and reorganisation of British state structures in China. I then examine the work of the SCC in connection with controlling the problem population of violent criminals and destitutes, and consider the relationship with the Shanghai Municipal Council (SMC), since collaboration with that body over crime and policing developed into a key relationship for the British state in China, in particular from the 1860s onwards through the attitude and practices of its first judge, Sir Edmund Hornby. This shows that ultimately the aims of improving British relations with China in accordance with the policy of the FO and ministers in the 1860s were not fully met by the structures established. Finally, I go on to explore the issue of race-based thinking in connection with the handling of the most serious violent crimes in the Court, to show how British judicial practices surrounding 'white violence' in China were similar to those found in colonial courtrooms elsewhere in the world. In this way, British official practices aimed at suppressing deviance in the form of serious crime were carried out by means of transactions involving unequal power

relations, which in turn contributed to the making of the treaty ports into distinctively colonial spaces.

Crime and disorder in the 1840s and 1850s: establishing the apparatus of control

British officials in the 1840s, tasked with creating new institutions of governance for the newly opened treaty ports, were clearly concerned by the crime and disorder which had caused friction under the previous regime when trade was conducted at Guangzhou prior to 1842.⁸ They anticipated that increased numbers of British subjects, especially seafarers, would need a more substantial apparatus of control than had previously existed, as a Foreign Office memorandum on proposed legislation in 1843 makes vividly apparent:

It can hardly be doubted that the utmost care will be required at all places in China opened to British Trade, to maintain the intercourse on a friendly footing. It will be necessary to consult, and as far as possible defer to, the wishes and prejudices of the Chinese authorities and People, and above all to take care that British Subjects either on shore or afloat should not commit excesses which may lead to collision and bloodshed.⁹

A combination of laws and regulations, together with the deployment of personnel at Hong Kong and in the treaty ports, constituted the early apparatus intended to meet the above aims. These have been discussed in general terms in the previous chapter, but here I provide details of specific provisions aimed at suppressing crime and disorder perpetrated by British subjects in China.

In the nineteenth century, seamen on British ships throughout the world were subject to a strict regime of discipline and control at the hands of the masters of vessels which was sanctioned by British law.¹⁰ State intervention in regulating and disciplining seamen and in particular preventing desertion has generally been viewed as having been designed to protect commercial interests, to ensure that shipping could function in the interests of trade and also to avoid where possible

⁸ See Morse, *International Relations*, vol 1, chapter 5 for a detailed narrative account.

⁹ TNA FO 17/76B: Memorandum: China Bill of 1843, 22 July 1843.

¹⁰ F.L Wiswall, *The Development of Admiralty Jurisdiction and Practice since 1800: An English Study with American Comparisons* (Cambridge, 1970), pp. 44-6.

state expenditure on repatriation if seamen were left behind at ports.¹¹ When British ships came into port, British consuls in places where there were no extraterritorial rights played a key part in upholding this system.¹² In China, as in the Ottoman Empire and other places where there was extraterritoriality, consuls' duties and powers were far greater, and their roles involved a larger degree of supervision over activities occurring on land, as well as more contact with the local authorities.

After the ratification of the 1842 Treaty of Nanjing, a set of controls to deal with British seafarers in the particular context of the China coast was laid down through a number of different provisions. The importance of such measures to Anglo-Chinese relations is indicated by the fact that specific details were included in the treaties made between the British and Chinese governments. In Article 6 of the Supplementary Treaty of Humenzhai of 1843 (also called the Treaty of the Bogue), which set out the key framework for the operation of trade at the ports, it was stated that 'seamen and persons belonging to the ships shall only be allowed to land under authority and rules which will be fixed by the Consul, in communication with the local officers.'¹³ Consuls issued their own rules to implement this provision, and Robert Thom demonstrated the ambitious aims some early British officials set for themselves in maintaining peace and order when he issued the regulations which would apply at his post at Ningbo in 1844:

Masters of British vessels will be required to be exceedingly strict and attentive as to the degree of liberty they allow their men while in port. No more persons will be allowed to go on shore from each ship than what are absolutely necessary for the carrying on of the lawful business of the ship, without being first duly reported at this Consulate and getting a special licence: and such special licences can only be granted when the men are under the care of an officer.¹⁴

By Article 10 of the Treaty of Humenzhai it was agreed that a British warship would be stationed at each of the open ports 'to enforce good order and discipline

¹¹ Graeme J. Milne, *People, Place and Power on the Nineteenth-Century Waterfront: Sailortown* (Basingstoke, 2016), p. 181.

¹² Edward William Symons, *The Law Relating to Merchant Seamen: Arranged Chiefly for the Use of Masters and Officers in the Merchant Service* (London, 1844).

¹³ *HCoT*, vol. 6, 1845, p. 264.

¹⁴ Tuson, *British Consul's Manual*, p. 247.

amongst the crews of merchant shipping, and to support the necessary authority of the consul over British subjects.’¹⁵ The ultimate symbol of British imperial domination in the treaty ports, the gunboat, was therefore in fact also a vital component of the apparatus designed to control British subjects, especially seafarers, in China.

Various rules were made by the superintendents of trade in the 1840s and 1850s which specifically targeted seamen as subjects of control. Ordinance No. 3 of 1844 prohibited ‘masters of merchant-vessels belonging to Her Majesty’s subjects from leaving seamen and others in a destitute state in the dominions of the Emperor of China’ without the consul’s permission. This required masters to give a bond to consuls, declaring that they would not leave behind any crew members without permission, and also that they would agree to receive any distressed seamen (not just members of their own crew) at the ports if sent on board by the consul to be conveyed to Hong Kong or Great Britain.¹⁶ In 1854, the superintendent issued consolidated and standardised regulations for the five ports.¹⁷ By Article 3 of the 1854 regulations, masters had to deposit their papers (which would include a list of the crew) at the consulate within 48 hours of arrival, and these would only be returned on completion of formalities before departure. Under Article 13, the permission of the consul was required in order to leave behind any person belonging to a British ship at the port, and even if permission were given, security was demanded ‘for his maintenance and good behaviour while remaining on shore.’ If British seamen who had been left behind were subsequently found to require ‘public relief’ the vessel would be ‘held responsible for the maintenance and removal of such British subject.’ Article 16 dealt with facilities at the ports for sailors, and required any British subject wishing to open ‘a boarding or eating-house’ to apply for the consul’s permission, and give security ‘that he will not harbour any seaman who is a runaway, or who cannot produce his discharge accompanied by a written sanction from the Consul to reside on shore.’¹⁸ Similar regulations were periodically reissued from then on by the superintendent, and

¹⁵ *HcoT*, vol. 6, 1845, p. 265.

¹⁶ *HCoT*, vol. 7, 1850, p. 171.

¹⁷ ‘General Regulations for British Trade’, of 18 May 1854 in *BaFSP* No. 47, pp. 594-98

¹⁸ ‘General Regulations for British Trade’, of 18 May 1854 in *BaFSP* No. 47, pp. 594-98

generally imposed a number of requirements on ships' masters in order to control their crews in particular.¹⁹ However, it was not always possible or desirable to keep the ports completely free of unemployed seamen through such means of control, particularly at Shanghai, where shipping grew rapidly (see table 1 below), as did a demand for European labour in areas such as the customs, municipal works and commercial undertakings, which hired lower class British men, in particular in policing, security and other lower level supervisory roles at the front line of the colonial interface with local people. In 1867 Shanghai Consul Charles Winchester reported that it would be inadvisable to prevent all discharges at the port because ships needed to be able to form new crews there, and he added that 'the general character of the port makes it the point to which stowaways, runaways and deserters from vessels at other ports are attracted.'²⁰

Year	Number of foreign ships	Number of British ships
1844	44	no data
1849	133	94
1852	182	103
1855	437	249

Table 1. Annual total of foreign and British ships entering Shanghai port (1844-55).²¹

The regulations aimed at trying to prevent seamen from causing difficulties at the ports were therefore both detailed and exacting, but the approach which developed to consular criminal jurisdiction over British subjects more generally was by contrast rather less well-defined. To accompany the OIC and ordinance of 1844 which gave consuls jurisdiction over British subjects in China, Superintendent of Trade John Davis sent out to consuls what were probably the earliest general instructions relating to their role in British governance, in which he explained that it was the duty of consuls to ensure that the grant of extraterritoriality did not have any 'injurious effects resulting from it to the

¹⁹ For example, in 1869 – 'Port, Consular, Customs, and Harbour Regulations, applicable to all the treaty ports in China' (31 May 1869), p.74 in *HChT*, 1908.

²⁰ TNA FO 228/433: Winchester to Alcock, 27 December 1867.

²¹ Figures are taken from Morse, *International Relations*, vol, 1, p. 357.

territorial Sovereign', in particular by maintaining order and punishing crime.²² Davis stressed that a practical approach to consuls' judicial duties was called for: it was desirable that cases should be settled informally where possible; when proceedings were necessary and crimes were to be punished, 'certain and speedy, rather than severe, punishment is to be preferred'; it was 'unnecessary to deal with crimes according to the strict definition of English law.'²³

A notable feature of the apparatus was the provision included in Davis' Ordinance No. 7 of 1844, to allow claims in assault cases to be settled through the payment of compensation: 'in case of assault, it shall be lawful for the Consular officer before whom complaint is made, to promote reconciliation and to suffer compensation and amends to be made, and the proceedings thereby to be stopped.'²⁴ This provision continued in force for some time, and it was included in the first principal OIC, of 1853, so clearly had the approval of officials at the FO, who were closely involved in drafting that instrument.²⁵ This flexible system was perhaps viewed as being the only way to create a system under conditions of limited resources which would enable consuls to balance the interests of shipping and trade with smoothing relations. As seamen were most likely to be responsible for cases of assault, compensation allowed quick settlement of cases, without the consequence of holding up shipping which would be likely if men were imprisoned as punishment. The practice further perhaps reflected a recognition that consular resources were stretched and that most consuls were not legally trained. There is also evidence that the practice was amenable to Chinese officials and Chinese victims and their families.²⁶ For example, in 1859 at Fuzhou, Consul Walter Medhurst settled the case of a Chinese girl who drowned following a violent incident by arranging the payment of compensation between the girl's family and

²² 'Order in Council relating to the trial and punishment at Hong-Kong, or in China, of Offences committed by British subjects', printed in *BaFSP* vol. 32, p. 895-7; Ordinance No. 7 of 1844 'for the better administration of justice in the Consular Courts', 20 November 1844, *HCT*, vol. 7 (London, 1850), pp. 185-191; John Francis Davis, 'Circular respecting consular jurisdiction', 22 November 1844, reprinted in Tuson, *The British Consul's Manual*, p. 230.

²³ John Francis Davis, 'Circular respecting consular jurisdiction', 22 November 1844, reprinted in Tuson, *The British Consul's Manual*, pp. 229-32.

²⁴ Article 6 of Ordinance 7 of 1844.

²⁵ Section 26 of the 1853 OIC, in *BaFSP*, vol. 42, p. 269.

²⁶ Morse, *International Relations*, vol. 1, p. 101. Also see the case at Fuzhou referred to below, where Medhurst claimed that compensation was proposed as a solution by Chinese officials.

the British subject accused of causing her death, instead of overseeing criminal proceedings against the man. Medhurst reported that the settlement of the case through compensation had been 'hinted at' as an appropriate response by the local Chinese authorities, and justified his action by declaring that the settling of the case had avoided the likely acts of 'blind and angry revenge' which an allegation of the murder of a Chinese by a foreigner would provoke.²⁷ In some ways, these practices represented a continuation of a long-standing approach to settling disputes between Chinese and foreigners on the China coast; in the years prior to the treaties, many cases of foreign violence against Chinese were settled this way.²⁸

Consuls had three options in the formal handling of criminal cases under the 1844 Ordinance: a summary decision; a decision made with the aid of British assessors drawn from 'respectable members of the British community'; and a referral of the case to the Hong Kong Supreme Court.²⁹ Consuls' powers of punishment were limited to sentences of imprisonment of 12 months or a 200 dollar fine, but Davis informed consuls that it was intended that only when British subjects had been charged with murder that they should be sent to Hong Kong for trial. Other than in this respect, Davis' circular and Ordinance did not address the role of the Hong Kong Supreme Court, and he appears to have envisaged its role in consular jurisdiction as being extremely limited. However, by an earlier Ordinance, the Hong Kong Supreme Court had been given very extensive supervisory powers, should it choose to exercise them: consuls were to report details of all decisions to the court; the court could decide to alter any decision 'as shall seem just and expedient'; and the OIC of 1844 also made clear that the chief justice of the Hong Kong Supreme Court had the power to try British subjects accused of crimes in China, beyond the colony.³⁰

²⁷ TNA FO 337: Medhurst to Bruce, 2 May 1860, enclosure in Bruce to FO, 22 May 1860.

²⁸ Morse, *International Relations*, vol. 1 gives details: pp. 99-107.

²⁹ Davis, 'Circular respecting consular jurisdiction', 22 November 1844, reprinted in Tuson, *The British Consul's Manual*, p. 231.

³⁰ Pottinger's Ordinance No. 2 of 1844 – in HcoT, vol. 7 (1850), p. 168; 'Order in Council relating to the trial and punishment at Hong-Kong, or in China, of Offences committed by British subjects', printed in *BaFSP* vol. 32, pp. 895-7.

Overall, this was not an attempt by the early superintendents to establish an apparatus which would in practice conform closely to the system of criminal justice delivered in the courts in Great Britain. It was, however, a serious and pragmatic attempt to create a system which would allow the consuls, given their limited resources, to do the minimum necessary – in accordance with the wishes the FO had expressed in 1843 – to ‘maintain the intercourse on a friendly footing’.³¹ Resources were targeted at seafarers, who were assumed to be the group most likely to commit crime, especially crimes of violence, and the superintendents appear to have intended to allow consuls flexibility to handle most cases speedily and economically, without recourse to the Hong Kong Supreme Court. However, despite these intentions, the Hong Kong court intervened on a number of occasions, causing friction between superintendents and the Hong Kong judiciary. An example of this clash in relation to cases arising from breach of the treaties has already been discussed in chapter one. There were also significant disagreements which arose over the handling of criminal cases, and in particular where British subjects were accused of violent behaviour towards Chinese.

In 1846 for example, Charles Compton was convicted by the Guangzhou consul Francis McGregor of an offence involving an assault and false imprisonment. McGregor and Superintendent Davis attempted unsuccessfully to deny Compton an appeal against his conviction to the Hong Kong court, motivated it seems in large part by a desire to mollify the Chinese authorities.³² They failed to do so and the decision of the consul was overturned by Hong Kong Chief Justice Hulme, who described the sentence as ‘unjust, excessive and illegal’. This triggered a set of actions on the part of Davis, including an unsuccessful campaign to discredit Hulme through accusations of drunkenness made to the FO.³³ Davis expressed his

³¹ TNA FO 17/76B: Memorandum: China Bill of 1843, 22 July 1843.

³² Keeton, *The Development of Extraterritoriality in China*, vol. 1 p. 218.

³³ From the *China Mail*, 26 November 1846, quoted in Keeton, *The Development of Extraterritoriality in China*, vol. 1, p. 222; for Davis’ attempt to discredit Hulme see Keeton, *The Development of Extraterritoriality in China*, vol. 1, pp. 225-6. Davis’ successor Bonham also feuded with the chief justice, again over the role of the supreme court in consular jurisdiction –see John King Fairbank, *Trade and Diplomacy on the China Coast: the Opening of the Treaty Ports, 1842-1854*.

anger over the actions of the Hong Kong court, and explained the difficulties it caused him, when reporting to Palmerston:

I hold the highly responsible office of preserving peace between the two countries, and therefore look to Your Lordship for a fair estimate of my motives in desiring to restrain the excesses of the English within the Chinese territories, where the inherent rights of the Government have been given up to us. Mr Hulme's argument is that of a petty magistrate in some parish in England – coupled, as I have before observed, with a great deal of unfair and unjust suppression. It will operate, I fear, as a terrible encouragement to our people to be violent in a place like Canton, where the elements of mischief are rife.³⁴

Davis also took steps to try to prevent a recurrence of this problem by issuing a new ordinance. In 1847 he removed the right of British subjects to appeal to the Hong Kong court from decisions in the consular courts.³⁵ However, because the consuls were not empowered to inflict heavy punishments, the problem caused by the need to make use of the Hong Kong court in cases of serious crimes committed in mainland China or its waters was not resolved by this action. A case arose in 1848 which again triggered considerable dissatisfaction with the Hong Kong court on the part of the superintendent of trade, by then Samuel George Bonham. This involved a British ship which attacked a Chinese fishing boat, killing five men. The captain was prosecuted in Hong Kong, but was acquitted amidst suspicions that Chief Justice Hulme had behaved improperly in his directions to the jury, and also that the Chinese witness had been bribed or intimidated by the British captain's supporters in Hong Kong.³⁶

Both Davis and Bonham wished to reform the system of consular jurisdiction by removing the ability of the Hong Kong court to participate in the handling of consular court cases, but were only partially successful in doing so. The most significant cases which prompted them to push for this outcome were not, however, ones involving the most marginal of British subjects: Compton was a merchant well able to afford the \$200 fine initially imposed by the Guangzhou consul and with the resources to appeal his case to the Hong Kong court. The

³⁴ TNA FO 228/57: Davis to FO, 25 Nov 1846.

³⁵ Keeton, *Extraterritoriality*, p. 224.

³⁶ Christopher Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880* (Richmond, 2001), p. 182.

captain in the case which annoyed Bonham was equally able to marshal resources to mount a defence to his case in the courts, and possibly also to bribe the witness. Although cases such as these troubled the SOTs, and they in turn complained to the FO about the role of the Hong Kong court, the complaints do not seem to have been taken seriously enough in London to prompt major reform of the procedure in criminal cases. This would come only with the rise of a 'rowdy' problem population in the late 1850s, amidst the unrest of rebellions and war.

New responses to disorder: Frederick Bruce at Shanghai and Beijing

Frederick Bruce became superintendent of trade in 1859, when the British government was still engaged in the conflict with the Chinese government triggered by the 1856 Arrow War. His assumption of the position represented a new start for Britain in China in terms of practical issues of governance in one key way: he was the first British superintendent of trade based permanently on Chinese soil, rather than at the colony of Hong Kong, and thus was not only engaged more closely and directly with Chinese officials, but was also more intimately aware of the proceedings of British subjects in China, especially the growing presence at Shanghai. Bruce's role in China's foreign relations has generally been explored in relation to the 'co-operative' policy which he is said to have initiated, in collaboration with US Minister Burlingame, at Beijing from the 1860s.³⁷ It will be shown here that his impact on British governance in China was significant, and that Bruce was clearly already thinking 'co-operatively' while at Shanghai in 1859, before the settlement of the Second Opium War was finally agreed late in 1860.

Bruce was based at Shanghai in the period 1859-60 after he had been barred by the Chinese from proceeding to Beijing to exchange the ratified Treaty of Tianjin. While there he was able to witness at first hand some of the misbehaviour perpetrated by violent British subjects, and see the effect it had on relations with the Chinese at Shanghai. He was clearly horrified by British behaviour in a number of areas, which no doubt motivated his desire to reform the system in response.

³⁷ Mary C. Wright, *The Last Stand of Chinese Conservatism*.

The situation presented to Bruce was one in which the British systems of law and order had been severely tested by a number of factors arising in the years shortly after the opening of the ports. Most obviously, the volume of British shipping had increased, in particular at Shanghai, and so too naturally had the work of the consuls in attempting to exercise the supervision outlined above. Furthermore, the trade in China had unique complicating features in that the technically-illegal opium trade played a huge part in it, and this produced particular challenges for consuls in dealing with crime and keeping order.³⁸ The opium trade at Shanghai also expanded considerably in the period 1843 to 1855.³⁹ Seamen employed in the opium trade worked not only on ships sailing between places transporting cargo, but also at receiving stations, or opium 'hulks', which were moored semi-permanently at locations along the coast. These were really floating warehouses which made it possible to conduct the opium trade outside large ports and thus allow British consuls to officially feign ignorance of its existence much of the time.⁴⁰ From the early days officials blamed the opium trade for fostering lawlessness among both foreigners and Chinese involved in the trade. The crews of opium hulks were obviously further removed from official supervision than crews manning ships coming and going at the open ports with other cargoes, and this remoteness exacerbated the difficulty for officials of controlling the activities of such men. Denser, more established connections between the crews of opium hulks and local Chinese were also made more likely since these craft stayed in one location for longer periods of time than was usual with ordinary shipping. Following a trial for a robbery committed at Xiamen in 1846 Consul Temple Layton reported that British opium ships in the area employed a 'reckless, lawless and smuggling class of seamen', who were in contact with 'the lowest thieves and prostitutes in Amoy [Xiamen]'.⁴¹

A further factor which presented a challenge to British systems of control was the lack of any effective Chinese government at various places from the mid-

³⁸ The opium trade was made legal in 1858 but continued use was made of receiving stations.

³⁹ Figures in Morse, *International Relations*, vol. 1, p. 358.

⁴⁰ See Fairbank, *Trade and Diplomacy*, pp. 227-236

⁴¹ TNA FO 228/70: 'Remarks by Consul', 8 January 1847, enclosed in Layton to Davis, 28 January 1847.

nineteenth century onwards, as the Qing state struggled to recover from the effects of both foreign invasion and internal rebellion. This allowed for the growth of the interrelated activities of piracy and convoying, the latter a practice whereby foreigners were paid by Chinese ship-owners, and sometimes Chinese officials, to accompany their vessels to guard against attacks by pirates.⁴² Rival groups of foreigners emerged who fought each other over supremacy in this activity, and also themselves engaged in acts of piracy, destruction or reckless violence. In 1859, Minister Bruce blamed convoying for drawing large numbers of British 'bad characters' to certain places on the coast. He described the crew of the typical British convoy boat: 'The foreign sailing-master is generally a seaman of an ordinary class, allured by the prospects of indefinite gain, and of a roving life, with a crew of half-castes and Chinese – the latter little, if at all, better than the pirates they profess to attack'.⁴³ Ningbo and its environs was a chief locus of the practice, where it was said to be carried on by British-owned boats, 'sailing without papers or flag' and thus breaking mercantile regulations, in addition to bringing crime and disorder.⁴⁴ Similar activities took place on the rivers, especially near Shanghai, where foreigners were hired to sail on Chinese boats and bully Chinese officials into letting contraband pass through. In 1862, Consul Adkins at Zhenjiang (about 240km upriver from Shanghai) reported to Bruce that a gang of Europeans and Chinese had murdered the captain of a junk and issued the dramatic warning that 'the river is likely to be overrun by foreign blackguards knowing no law and under no control.'⁴⁵

The number of unemployed British 'blackguards' also grew as a result of the Second Opium War and the Taiping rebellion in China (1850 to 1864). By 1862, the SMC was reporting that the 'increase of the foreign population, more especially in the lower orders, within the last 12 months, has defied all the efforts of the Council to keep pace with it in police organisation.'⁴⁶ This growth occurred at least in part as a direct consequence of war and rebellion, since British soldiers who

⁴² Fairbank gives a description of this practice in his *Trade and Diplomacy*, pp. 329-46.

⁴³ TNA FO 17/314: Bruce to FO, 5 November 1859.

⁴⁴ TNA FO 17/314: Bruce to FO, 5 November 1859.

⁴⁵ BPP, HC, *China No. 3 (1864) Papers relating to the Affairs of China*, vol. 63, [c.3295], (1864), p. 8.

⁴⁶ 'Municipal Report for the Year 1862', *NCH*, 11 April 1863, p. 58.

were discharged following the British military engagements in those events were sometimes left in China. In 1864, the *North-China Herald*, which reported 'an alarming increase in crime of every description' at Shanghai, attributed it in part to the fact that a large number of men of the British 31st regiment, when on the point of returning to Great Britain following the war, had been allowed to join Gordon's Chinese government-backed force fighting the Taiping, without any arrangements being made for them to be repatriated once the unit was eventually disbanded. When the latter event took place, the paper declared, 'the country became flooded with foreigners of the very worst character.'⁴⁷ A large number of soldiers from the same regiment were also recruited to join the Shanghai Municipal Police at around the same time, but many were dismissed after serving for only a short time for offences including drunkenness.⁴⁸

In 1864 it was reported by the Municipal Council that at Shanghai there were about 45 'white men' some of whom were said to 'eke out a precarious existence as watchmen at Gambling Houses', while others had no fixed abode and moved from Shanghai by boat for short periods inland from time to time.⁴⁹ The latter were probably engaging in 'creek piracy', which meant sailing up the smaller waterways in search of vulnerable Chinese targets to plunder and was another activity facilitated by the breakdown of government authority. Creek piracy and other crimes committed by gangs, often composed of both foreigners and Chinese, were a particular feature of the period of the early- and mid-1860s, when the areas neighbouring Shanghai were subject to the greatest degree of unrest caused by the Taiping Rebellion. The typical *modus operandi* of the creek pirate was described by Judge Edmund Hornby in his autobiography:

Their habits were to get a snake-boat, hire a Chinese crew of eight or ten scoundrels, and go up the creeks into the interior, plunder villages,

⁴⁷ 'Summary of the Week', *NCH*, 23 January 1864, pp. 14-15.

⁴⁸ In 1863 the SMC employed ninety-two men from the British 31st Regiment, which was no longer required in China following the end of the Arrow War: *Municipal Report for the Halfyear ending 30th September 1863*, p. 1. See also Robert Bickers, 'Ordering Shanghai: Policing a Treaty Port, 1854-1900', in David Killingray, Margarette Lincoln and Nigel Rigby (eds.), *Maritime Empires: British Imperial Maritime Trade in the Nineteenth Century* (Woodbridge, 2004), 173-94.

⁴⁹ Gould letter to Parkes, 30 September 1864, printed in Supplement to *NCH*, 22 April 1865.

levy blackmail, beat and sometimes murder the villagers, rape the women, and ill-use the children.⁵⁰

It was said to be impossible to convict foreigners involved in these kinds of violent acts, because Chinese witnesses were not prepared, presumably out of fear, to give evidence against them.⁵¹

By the late 1850s, as Britain's relationship with China was being re-evaluated amidst the crisis of the Second Opium War, it was therefore already clear that consular criminal jurisdiction was fraught with difficulties, and the pressures on the system were increasing. A set of structures which had been designed to deal with violence and disorder on the part of seamen, focussed on keeping them on their ships as much as possible, and removing those who were left behind economically and quickly, was not workable in the context of the China coast as it had developed, amidst the expansion of commerce (especially trade in opium), dubious maritime activities and a general breakdown of Chinese government authority. The reasons outlined above had led to a fairly rapid growth in the population of British sojourners or settlers at the treaty ports, and especially Shanghai.⁵² Resources were therefore strained. In 1857, the Shanghai consular jail was so crowded that men were released early after an outbreak of sickness.⁵³ Consuls asked for more resources in response to the increase in crime: Meadows at Shanghai in 1859 requested an additional constable and reported that the consular jail often had 40 prisoners in it.⁵⁴ Consul Robertson at Guangzhou reported that 'owing to various causes, a considerable number of unemployed Europeans, chiefly British subjects, find their way up here' and requested a European constable so he could 'keep something like order among a class whose proper residence is a prison'.⁵⁵ Consul Harry Parkes, at Shanghai in the 1860s, also complained of the increasing workload imposed on him by dealing with judicial matters, and the problem of 'foreign rowdies' became an issue of growing importance to the SMC,

⁵⁰ Hornby, *Autobiography*, p. 254.

⁵¹ TNA FO 17/314: Bruce to FO, 5 November 1859.

⁵² The Shanghai International Settlement's British population grew from 91 in 1847 to 256 in 1851, and reached 894 by 1871. Source for 1847 figure – Morse, *International Relations*, vol. 1, p. 355; other figures from Robert Bickers, 'Shanghaiers: The Formation And Identity Of The British Settler Community In Shanghai 1843–1937', *Past & Present*, 159, 1 (1998), 161–211, p. 176.

⁵³ TNA FO 97/106: Shanghai Police Sheets, 31 December 1857.

⁵⁴ TNA FO 228/274: Meadows to Bruce, 14 November 1859.

⁵⁵ TNA FO 228/305: Robertson to Bruce, 7 January 1861.

who asked the foreign consuls in 1864 to assent to the Council establishing a 'system of incarceration and enforced labour in the case of all persons, native or foreign, who failed to afford a satisfactory account of their presence.'⁵⁶ From February 1865, the SMC to begin collecting data about foreigners 'without known occupation' in Shanghai, which was sent monthly to the foreign consuls.⁵⁷

As concern over disorder and criminality increased, British officials began to view certain foreigners, a significant number of them British subjects, whose livelihoods in China were based on engaging in violent crimes ranging from murder and piracy to assaults and petty theft, as a distinct problem population. They were most often referred to as 'the rowdy class', and officials increasingly turned their attention to dealing with this group, who they viewed as a clear threat to British interests. Superintendent of Trade Bruce attempted reforms aimed at securing greater powers for himself and the consuls in 1859. In a lengthy despatch addressing both the issues of the convoying system and British 'bad characters' more generally, Bruce argued that there were many failures in British justice in China as it was then practised, and that to solve them required that the powers of the superintendent and consuls be increased to enable them to act preventively, by deporting those with no visible means of subsistence and unable to find security for their good behaviour, without the need first to prove the commission of an illegal act. This he asserted was necessary for 'justice to the Chinese, and not less a regard for our own interests and reputation.'⁵⁸ The FO referred Bruce's request to the law officers of the crown, who criticised the proposal, calling it an 'extreme measure', and the FO informed Bruce that they would not grant the additional powers to consuls.⁵⁹ The law officers insisted that existing powers had not been sufficiently tested, and that Bruce and his consuls should attempt to exert greater control without any augmentation to the tools at their disposal.

⁵⁶ Lane-Poole, *Harry Parkes*, p. 475; *Minutes of the SMC*, vol. 2, 28 September 1864, p. 95.

⁵⁷ *Minutes of the SMC*, vol. 2, 1 February 1865, p. 127.

⁵⁸ TNA FO 17/314: Bruce to FO, 5 November 1859.

⁵⁹ TNA FO 83/2251: Law Officers (Queens advocate Harding) to FO, 13 Feb 1860; and FO to Queens advocate Harding, 11 Oct 1860.

Bruce's focus at this time was very clearly fixed on removing factors which provoked Chinese hostility towards foreigners. In doing so, he espoused a point of view which was not in itself novel: as we have seen, Superintendent Davis had emphasised the aim of maintaining good relations with the Chinese by keeping British violence under control. But in another move he made while at Shanghai, Bruce did attempt a different solution to the problem of violence against Chinese. He insisted that past practices involving conciliation and compensation in settling cases of violence should be abandoned. He reported to the FO that the existing practices required reform because they neither discouraged abuse, nor satisfied the obligations in the treaties, and moreover they created 'prejudicial results on the disposition of the native inhabitants' towards foreigners.⁶⁰ Bruce wrote to Consul Walter Medhurst at Fuzhou, who had brokered compensation in the case where a Chinese woman drowned following a violent incident perpetrated by British subjects, and wrote also to Consul William Gingell at Xiamen, where he had learned of similar practices, reminding the latter that 'the lives and property of Chinese are under treaty as sacred, as those of an Englishman in England'.⁶¹ He ordered Medhurst and Gingell to ensure in future that crimes against Chinese were punished in such a way as to ensure that British subjects would be deterred from committing such acts. As well as expressing a difference of opinion with past approaches over the practical means to maintain good order, Bruce was also making an argument for official actions to be strictly correct in a more abstract sense; he emphasised equality and universal values, and there was a clear moral tone evident in his choice of words – in particular his assertion that Chinese lives and property were 'sacred'.

Bruce continued to focus on the reform of consular jurisdiction, pushing for the power to remove 'notorious characters' from the treaty ports, and also raising the problems arising from the need to send serious criminal cases to Hong Kong for trial, since consuls still could not inflict heavy sentences. In 1860 a man named McCodd was acquitted of murder by a Hong Kong jury, and the law officers in London acknowledged that this had been done 'perhaps somewhat unreasonably',

⁶⁰ TNA FO 17/337: Bruce to FO, 22 May 1860.

⁶¹ TNA FO 228/285: Bruce to Gingell, 17 May 1860.

but they once more stopped short of accepting that serious reform was needed, arguing that to give consuls greater powers would endanger 'public and private rights'.⁶² Former Hong Kong official Norton-Kyshe, in his history of the courts of Hong Kong written at the end of the nineteenth century, summed up the situation which existed prior to 1865, chiefly as a result of the problems of biased juries and getting Chinese witnesses to the colony to testify:

A fine of a thousand dollars or twelve months imprisonment was no fitting punishment for murder or arson, and yet it was the only one that could with any certainty be applied. To send a criminal for trial to Hong Kong was, as a general rule, to ensure his acquittal and release.⁶³

The US consul at Shanghai, by contrast, was at this time not impeded in the way his British counterpart was, and in 1863-4, US Consul George Seward launched a crackdown on his own nationals by prosecuting and sentencing to death three US citizens, all for crimes of violence, one of whom, David Williams, had killed three Chinese while involved in creek piracy.⁶⁴

Although earlier reforms to the interrelationship of consular jurisdiction with the Hong Kong court had removed the problems surrounding cases involving the treaties (see chapter one), the different arms of British governance charged with dealing with British criminals in China did not work well together and produced a dysfunctional apparatus of control. The *NCH* called for reforms to the system following the case of a seaman who had shot a Chinese woman and had been given a sentence of only three months' imprisonment and deportation:

In Shanghai, where the number of low class foreigners is every day increasing we want either a magistrate entrusted with far higher powers than those wielded by our present energetic Consul, or a judge of assize who should at stated intervals go a circuit of the ports, and enjoy the same authority as is vested in the Supreme Court of Hong Kong.⁶⁵

All of the above issues – the rising concern over a British criminal problem population, especially at or near Shanghai, the inadequacy of consular powers and

⁶² TNA FO 83/2251: Law Officers to FO, 8 November 1860.

⁶³ James William Norton-Kyshe, *The History of the Laws and Courts of Hong Kong from the Earliest Period to 1898*, vol. 2 (Hong Kong, 1971), p. 78.

⁶⁴ Scully, *Bargaining with the State from Afar*, pp. 68-9. *NCH*, 20 February 1864, p. 30.

⁶⁵ *NCH*, 4 February 1865, p. 18.

legal knowledge, the problems of the Hong Kong court – contributed to a distinct sense of crisis in Bruce's despatches to the FO concerning the state of British law and order at the treaty ports in the later 1850s and early 1860s. At the same time, the FO and especially Bruce were committed in the early 1860s to the opening of a new chapter in relations with China, and to pushing the Qing state to expand its governance in a form more alike that exercised by European states.⁶⁶ Bruce explicitly connected this project with the requirement to take steps to control British crime and violence when writing to Consul Parkes about municipal government at Shanghai:

I look forward to increased confusion and difficulty if we cannot make the Chinese exert themselves to do their duty, and if we cannot keep our own blackguards in order. We must work with the Chinese officials, and not be perpetually in antagonism, if we wish to found anything permanent.⁶⁷

The need was therefore seen for a major reordering of British approaches towards crime in China, and the FO by 1864 accepted the case for major reform. This was achieved through an expansion of the British state's institutions in China by means of the 1865 OIC and the founding of the SCC at Shanghai. This institution, already described in general terms in chapter one, naturally played an important part in subsequent British actions to deal both with crime generally, and 'the rowdy class' as a particular problem population, especially at Shanghai.

Violence and the 'rowdy class' under the British Supreme Court at Shanghai

As described in chapter one, the FO brought Sir Edmund Hornby to China from the Ottoman Empire in 1865, to head up the new judicial system as chief judge, based at Shanghai. Hornby continued Bruce's work in an important respect by immediately turning his attention to the question of violent British subjects. In February 1866 he made a lengthy report to the FO reviewing the work of the new judicial system since its commencement, in which he reported in some detail on the question of violence towards Chinese at the treaty ports. From Hornby's autobiography and his despatches in the archives, it is plain that he was no

⁶⁶ Wright, *The Last Stand*; Hevia, *English Lessons*.

⁶⁷ Bruce to Parkes, 29 March 1864, quoted in Lane-Poole, *Harry Parkes*, p. 482.

moralising progressive, influenced by either religious views or egalitarian ideals, and he clearly believed in British superiority over 'Asiatics' and the naturalness of colonial hierarchies.⁶⁸ Nevertheless, Hornby found the level of violence at the treaty ports unacceptable. He explained that 'Chinese servants, labourers and even small native merchants were constantly assaulted and severely beaten upon the slightest provocation or suspicion' by British subjects, whose behaviour 'exasperated the natives against foreigners'.⁶⁹ One way he addressed the problem was by making an example of a British master of a ship who had flogged some Chinese workers suspected of stealing opium. Hornby punished the master, George Bennet, by inflicting on him a sentence of imprisonment.⁷⁰ Bennet was said to be 'very much surprised at the Court's interference', and Hornby explained that he had received a large number of complaints and two petitions from the British community about the handling of this case.⁷¹ The petitioners argued that Bennet had 'acted according to a custom of the port', and that such practices had long been accepted by the Chinese authorities, who had 'absolutely deputed to shipmasters the power of punishing Chinese for offences'.⁷²

Both Hornby's actions in the Bennet case, and Bruce's earlier move to stop compensation in lieu of punishment, were said to be taken to improve relations with the Chinese. And yet both measures involved overturning practices which were said to have existed at the treaty ports for some time with the complicity of Chinese officials, suggesting the complicated nature of this issue. It was perhaps almost instinctive for Hornby as a trained British judge to admonish British subjects for taking the law into their own hands, having been sent out to China, just as he had also been sent to the Ottoman Empire, to organise and rectify a confused judicial system. But this move away from a kind of improvised co-operation at the local level, especially in the case of Bruce's actions, also serves as a reminder that the British 'co-operative policy' in China was part of a new approach which meant more than propping up the Qing regime or smoothing over any conflicts which

⁶⁸ Hornby, *Autobiography*. Very many examples could be cited from this text. See pp. 235-237 for a typically disdainful description of Chinese officials.

⁶⁹ TNA FO 17/453: Hornby to FO, 8 February 1866.

⁷⁰ TNA FO 17/453: Hornby to FO, 8 February 1866.

⁷¹ TNA FO 17/453: Hornby to FO, 8 February 1866.

⁷² TNA FO 17/453: memorial enclosed in Hornby to FO, 8 Feb 1866.

arose: it involved a moralistic or even a pedagogical aspect too, a point which James Hevia has made when analysing Anglo-Chinese interactions in the same period at the diplomatic level.⁷³ Hornby claimed that this aspect was made clear to him by the FO in advance of both his extraterritorial judicial appointments:

I may mention that while both Lord Clarendon and Mr. Hammond desired to put the English judicial service in Turkey - and afterwards the same service in China - on a better footing, they both desired to set an example to the Governments of those two countries.⁷⁴

This was then a reassertion and strengthening of British state authority at the treaty ports, which fitted in with the British call for the Chinese state to also assert itself in China. If British subjects had grievances with Chinese subjects, rather than the former taking the law into their own hands, the Chinese state must be made to exercise its sovereignty and take action. Hornby's early actions aligned with this policy, but as time went on he can be seen to have strayed considerably from the line taken by the Legation, as he became closer to British mercantile interests and increasingly scornful of Chinese officials.

The advent of the SCC under Hornby in this way represented, at least initially, a continuation of the course Bruce had set. Hornby was also early on able to further another of Bruce's goals, when he took a tough stance against members of the problem population he identified as the 'rowdy class' of British subjects, a group which Bruce had in 1859/60 tried but failed to obtain extra deportation powers to deal with. It is clear that in the mid-1860s, when the SCC was established at Shanghai, foreign criminals as a problem population continued to be high on the agenda of British officials. As already described above, the problem of Chinese and foreign criminals, particularly gangs, was an area of great concern to the Shanghai Municipal Council too. It also troubled the local Chinese authorities, who expressed their concerns to the SMC in 1864, and were reported to have urged the need to rid the International Settlement and the Chinese city of both Chinese 'bad characters' and the 'numerous foreign rowdies who infested the port.'⁷⁵ Such concerns led the Chinese to agree to the creation of the Shanghai Mixed Court in

⁷³ Hevia, *English Lessons*.

⁷⁴ Hornby, *Autobiography*, p.94

⁷⁵ *Minutes of the SMC*, vol. 2, meeting of 28 September 1864, p. 95.

1864, described in chapter one. In February 1866, British Consul Charles Winchester sought to strengthen co-operation with local Chinese officials, requesting that the SMC supply weekly reports with descriptions of all unemployed foreigners to him in order that he could pass them to the daotai, so that such men could be more easily arrested if they were found in the area surrounding Shanghai. However, it is clear that British consular officials of the time were more enthusiastic about collaboration with the Chinese than were the Council. The SMC expressed the concern that the Chinese might apprehend 'respectable people', either by mistake or 'using the descriptions as a lever against Foreigners', but reluctantly agreed, at the consul's insistence, and passed on details of British subjects only.⁷⁶ The problem of foreign 'rowdies' can thus be seen to have been a significant area of concern shared both by consular officials and the SMC, with the former also wishing to engage the Chinese state to a greater degree in resolving it.

This mutual concern led to joint action not long after the SCC opened late in 1865. In December 1866, Judge Hornby requested the assistance of the SMP in pursuing a gang of four foreigners and four Chinese who it was reported had left Shanghai a few days earlier, 'for the purpose of plunder'.⁷⁷ A sergeant and a constable from the SMP were sent with a Chinese gunboat on the mission. It was of course natural for the judge to rely on the SMC and its police force to make arrests, as indeed consuls at Shanghai had already done for some time, but collaboration under Hornby quickly became closer than it had been in the past, as Hornby became a strong advocate for the SMC and for British state support of it. As already noted in chapter one, earlier in 1866 Hornby wrote to the FO, at a time when there were doubts about the future status of the International Settlement, to push for the SMC to be supported. He made his argument on one ground of particular relevance here: that it was important that the SMC should remain a viable local authority so that it could continue to police the International Settlement; the alternatives would be either a 'heavy pecuniary burden' on the British government, or 'fearful loss of life and property' if the Chinese authorities were relied upon to provide security in

⁷⁶ *Minutes of the SMC*, vol. 2, meeting of 18 February 1866, pp. 278-9.

⁷⁷ *Minutes of the SMC*, vol. 3, meeting of 11 March 1867, p. 53.

the Settlement instead, the Chinese being 'utterly unfit' to keep order.⁷⁸ The problem of control of criminality at Shanghai was thus used as a justification of the SMC's anomalous position and for deepening engagement between British state structures, especially judicial bodies, and the SMC at Shanghai.

In 1866, Hornby took further steps against the activities of the 'rowdy class'. He wrote to Minister Alcock proposing a new regulation to tackle the problem of foreigners living from crime against Chinese, by attempting to make it impossible for them to engage in 'creek piracy' outside the treaty ports. He explained that it was well known that British subjects frequently left the ports in order to travel into the surrounding country, where 'native boats are constantly pillaged and villages are placed under contribution', rendering 'all foreigners hateful to the masses of the people', but that the court was unable to convict them since evidence was unobtainable. He explained furthermore that it was impossible to deport such men as vagabonds, since 'their crimes enable them to maintain a decent appearance and to live at ease.'⁷⁹ Hornby presented a draft to Minister Alcock of a scheme designed, by preventing them leaving the ports for any length of time, to put a stop to their activities. His proposal would give the judge and the consuls the power to require that any 'persons who, it may be reported to them, have no ostensible means of livelihood' produce evidence of their means of subsistence; if they were unable to do so they could be made to report personally to an appointed person at times as instructed by the judge or consul.⁸⁰ Those who failed to comply would be imprisoned or deported. Alcock immediately approved the regulations, and sought the FO's retrospective assent to them, which was given.⁸¹ In 1867, Hornby maintained his stance against criminal and destitute Britons, urging consuls in his *Instructions on Consular Jurisdiction*, that it was essential that 'what is called in these Countries the "rowdy Class" should be got rid of' by means of consuls' powers of deportation.⁸²

⁷⁸ TNA FO 17/453: Hornby to FO, 8 February 1866.

⁷⁹ TNA FO 656/23: Hornby to Alcock, 17 December 1866.

⁸⁰ FO FO 17/474: 'Notification' enclosed in RA to FO 11 March 1867.

⁸¹ FO 17/1258 RA to FO 17 Jan 1867.

⁸² Hornby, *Instructions*, p. 19

It is clear that Hornby's actions against 'the rowdy class' matched both the Legation's and the SMC's priorities in ridding the treaty ports, and especially Shanghai, of violent and criminal gangs comprising British subjects, as well as destitutes with no livelihood other than begging or petty theft. Hornby's actions against Captain Bennet and others who committed acts of violence against Chinese were also clearly well aligned with the policy of Ministers Bruce and Alcock, who spearheaded the 'co-operative policy' in the 1860s. As the attitude of the SMC towards sharing information with the Chinese authorities showed, however, there were differences between the minister and consuls' desire to assist the Chinese to play their part in policing their territory, and the attitude of the SMC, which was generally suspicious of Chinese officials. As already noted, in the longer term, despite his early moves, Hornby showed a marked tendency to favour the stance of the Council, and his influence and the mere fact of the court's location at Shanghai, increased the degree to which the British state became enmeshed, through its project of governance over British subjects in Shanghai, in the work of the SMC over the longer term. This theme is further explored in chapter five, relating to Indian British subjects.

As described in chapter one, Hornby grew to be very supportive of the SMC and dismissive of the Chinese government after only a short time at Shanghai.⁸³ This bias was eventually also apparently expressed in the way that his attitude changed towards British subjects who took the law into their own hands. In 1870, Hornby overturned the decision of the consul at Taiwan in a case where British subjects had been robbed of some camphor, and had subsequently taken direct action in response, with the result that the consul decided to prosecute them. Hornby's action seems to contradict his earlier stance against Captain Bennet and others who used violent actions to punish or exact vengeance on Chinese subjects, rather than rely on Chinese officials to ensure justice. Minister Wade was displeased with Hornby, and the question was referred to the law officers, who described the nub of the issue between the two men thus: 'the Chief Judge apparently thinking that to rely on the Chinese authorities is practically useless in such matters; the Minister

⁸³ In his autobiography, he went as far as to call Chinese ministers 'big, obstinate, insincere babies.' Hornby, *Autobiography*, p. 237.

thinking that on the whole and in course of time it is better for our interests to treat them, as really civilized officials.’⁸⁴ The law officers declined to intervene and did not criticise Hornby, sending a rather equivocal response in reply to the FO. One side effect of the establishment of a centre of judicial authority in China, was a reduction in the influence of the law officers over legal issues, and Hornby made use of the flexibility given to him to resist moves by British ministers which would place greater reliance on Chinese officials. A further example, from the previous year, saw Hornby clashing with Minister Alcock over the latter’s attempt to establish a joint tribunal to settle all civil claims between Chinese and foreigners, which Hornby strenuously resisted.⁸⁵ The contrast between Hornby’s approach to Chinese officialdom and that of Bruce, and other British ministers of the 1860s, could not be greater.

The impact of ideas of racial difference in cases of violence against Chinese

Since the problem of dealing with the most serious crimes, especially those inflicted against Chinese, was said to be the greatest deficiency in the old system which the new SCC was intended to address, it is important to consider how effective this reform was in achieving that aim. Although the evidence discussed above shows that Judge Hornby clearly did use his position as head of this new institution to crack down on British acts of violence, especially those carried out by marauding or destitute British subjects designated ‘the rowdy class’, there is room for a more detailed examination of the nature and extent of changes to practices under the new court, and a consideration of what the consequences of these practices in cases of serious violence towards Chinese were for victims, witnesses and defendants. The court’s approach in such cases also had consequences for the development of the treaty ports more generally as sites of colonial practice.

There is one way in which the new institution clearly had an impact on life at the treaty ports: the creation of the court brought the full ‘experience’ of the British legal system to Chinese soil for the first time since 1842, with qualified judges,

⁸⁴ TNA FO 83/2253: Law Officers to FO, 11 May 1871.

⁸⁵ TNA FO 228/484: Hornby to Clarendon, 27 July 1869.

juries, support staff and the greater use of legal counsel in court cases.⁸⁶ In cases before the court legal conventions were followed more closely than in the earlier consular courts, there was more time spent by counsel making extensive and complex legal arguments, and a number of issues relating to the application of British law in Chinese surroundings were raised for the first time. Cases which dealt with the death of a Chinese at the hands of a foreigner were naturally particularly closely watched and well-publicised. They were widely reported on in both the foreign and Chinese press, and thus highly influential. Moreover, Chinese people – ordinary residents of Shanghai and Chinese officials – played a part in proceedings as either injured parties, witnesses or observers. The role played by this institution in creating Shanghai as a colonial city should therefore be acknowledged and explored further.⁸⁷

There were a number of fairly high-profile cases in the 1860s and 1870s in which Chinese were shot and killed by British subjects. While comparisons of outcomes between court cases are of limited value, since we may question whether the facts of cases are sufficiently similar for us safely to do so, it is possible to tentatively draw the conclusion that, under the new court, more severe sentences were passed against British subjects convicted of manslaughter for such crimes. For example, in 1864 and 1865, there were two cases handled by the local consuls, before the opening of the SCC at Shanghai, where British subjects were found guilty of manslaughter for shooting and killing Chinese and were given very light sentences. The consuls' priorities in both cases seem to have been to have the guilty parties deported. At Hankou a Doctor named Rice fired at a Chinese crowd who were watching a festival near to his house, some of whom were standing on his property. The consul gave Rice a sentence of a fine and deportation.⁸⁸ In the other case, involving a former ship's steward named Dodds who fired what he claimed was a warning shot at a boat near Shanghai, the sentence was slightly

⁸⁶ Although juries were already used in Hong Kong, I stress here the importance of the trial taking place in China, with juries made up of members of the resident British community, witnessed by Chinese people, especially officials and also residents of Shanghai.

⁸⁷ John Comaroff has argued persuasively for the way that law was 'constitutive of colonialism': John L. Comaroff, 'Colonialism, Culture, and the Law: A Foreword', *Law and Social Inquiry-Journal of the American Bar Foundation*, 26 (2001), 305–14.

⁸⁸ *NCH*, 23 July 1864, p. 118.

heavier – three months’ imprisonment plus deportation – and quite possibly reflected the defendant’s lower status. The fact that these sentences were very light for the crimes committed, even by the standards of the place and time, is shown by the articles which were published expressing harsh criticism of both sentences in the *North-China Herald*.⁸⁹

After the opening of the SCC, Judge Edmund Hornby presided over a very similar case to the two above in Shanghai in 1873. A British man, Ford, apparently from a reasonably prosperous background, was found guilty of manslaughter having shot and killed a Chinese ‘coolie’, who with a group of others, was remonstrating with Ford outside his house over the payment owed for work done by them. Despite expressing considerable sympathy with the defendant in his summing up of the case, Hornby sentenced him to two years’ imprisonment, a considerably heavier sentence than the one given to the doctor or the ship’s steward by consuls less than ten years earlier.⁹⁰

The *zhixian* (Chinese district magistrate) was reported to have been present in court at the hearing in the Ford case, and it appears that this was not an uncommon practice in cases of serious violent crime against Chinese.⁹¹ The court was therefore an important point of contact between British and Chinese officials, outside their usual interaction through administrative dealings. A case involving British violence leading to the death of a Chinese, which was viewed by Chinese officials as of particular importance, was that of *R. v George*.⁹² This case, from 1869, may appear unusual alongside those already discussed in that a British subject, Robert George, was found guilty of murder by a British treaty port jury, and was executed at Shanghai as a result. However, a closer reading of reports regarding the case reveals that George was described at one point as an ‘East-Indian’; given his European name, he was presumably therefore a Eurasian from India. Moreover, theories of racial difference were used by the defence to put

⁸⁹ *NCH*, 4 February 1865, p. 18.

⁹⁰ *NCH*, 30 October 1873, pp. 371-80.

⁹¹ *NCH*, 30 October 1873, pp. 371-80.

⁹² Cassel, *Grounds of Judgment*, pp. 73-4. According to Cassel, the case was cited in a Qing handbook for officials.

forward arguments on George's behalf in his trial. The jury were asked to 'think of his excitable temperament, for it is well known how easily people from his country are roused to anger'.⁹³ His conviction and execution were therefore not so much the anomaly they might at first appear to have been. The use of arguments based on essential racial differences, widely aired in colonial courts elsewhere in the world, show the continuities between the practice of the British court in Shanghai and courts across the British empire.⁹⁴ Judge Hornby clearly subscribed to such racial thinking, and made the explicit comment in his autobiography, again akin to common assertions about the weakness of Indian bodies familiar from the Indian legal context, that 'Chinamen have very thin skins, and what an English sailor would hardly feel cuts into their flesh.'⁹⁵

Essentialist assumptions about Chinese characteristics, sometimes implicitly but often overtly racist, were also clearly visible in the detail of some of the cases discussed above. The validity of Chinese oaths was questioned and considered in some depth in both the Ford and George cases. As the nature of Chinese metaphysical beliefs was discussed before them in the court room, the Chinese observers present, including officials, might well have been bemused by the spectacle of British 'experts' on things Chinese (in the Ford case, by missionary William Muirhead, who acted as interpreter) putting forth their views on the subject. The truthfulness of Chinese witnesses was questioned too, in ways which must have seemed insulting to those Chinese present. No challenge was made by the judge or prosecution to assertions by the defence in the Ford case regarding 'the mendacity of Chinese witnesses'. Judge Hornby however suggested that the low intelligence of 'Asiatics' meant that they were unlikely to be lying if the story told was long or complex: 'After an experience of nearly 20 years with Asiatic witnesses, I may give you the benefit of my own observation upon the subject. I never knew Asiatic witnesses who were capable of giving anything like cooked

⁹³ *NCH*, 24 July 1869, p. 384 and p. 389.

⁹⁴ Kolsky, *Colonial Justice in British India*.

⁹⁵ Hornby, *Autobiography*, pp. 252-3. Kolsky has shown how frequently the supposed weakness of Indian bodies was raised in court as a reason why Indians often died at the hands of violent whites in India – Kolsky, *Colonial Justice*.

answers to a long story.’⁹⁶ The crude way in which diverse populations were essentialised and glossed as ‘Asiatics’ allowed Hornby to lump together the Ottoman subjects he had encountered in his previous post with the Chinese people he now met at Shanghai.

The need to rely on juries to decide the verdict in serious criminal cases was another way in which Chinese at the treaty ports witnessed the nature of British colonial justice, along with the assumptions and prejudices of British residents of China. British subjects who killed Chinese people were on several occasions acquitted by juries, even of the lesser charge of manslaughter, in the face of strong evidence of guilt. In 1874, one Thomas Fawcett, who had been responsible for overseeing works on a lighthouse being constructed in Shandong, shot and killed a Chinese man who he suspected of stealing from the building site. Judge Hornby went on circuit to Yantai to try the case, and very plainly made it clear to the jury that a verdict of manslaughter was appropriate. He was reported to have reminded the jury that – and it is surely telling that he felt the need to do so – ‘A Chinaman’s life is as precious as that of one of our own countrymen.’⁹⁷ The jury, however, acquitted Fawcett, which caused an angry reaction from Chinese observers at the court, as well as Minister Thomas Wade, and also prompted a lengthy discussion in the widely-read Chinese newspaper *Shenbao* (申报).⁹⁸

The clearly prejudiced jury at Yantai was not an isolated occurrence, and successive judges expressed concerns about the problem of juries. In 1877, Hornby proposed that special procedures should be adopted to deal with cases where British subjects were accused of crimes against Chinese subjects, including the option for trials to take place without a jury, because it sometimes happened that ‘the British community may be known to have ranged themselves on the side of the accused’, but the changes he recommended were opposed by Hiram Shaw

⁹⁶ ‘R. v. Ford’, *NCH*, 30 Oct 1873 p.379.

⁹⁷ ‘R v Fawcett’, *NCH*, 26 September 1874, p. 321.

⁹⁸ Hornby, *Autobiography*, p. 243. *Shenbao* – ‘Communications to the “Shun-Pao” Regarding the Fawcett Case’, *NCH*, 29 October 1874, pp. 428-9. For an examination of *Shenbao* and its significance for Chinese society, see Barbara Mittler, *A Newspaper for China?: Power, Identity, and Change in Shanghai’s News Media, 1872-1912* (Cambridge, Mass., 2004).

Wilkinson (then Law Secretary, based at Kanagawa in Japan, later to be judge of the SCC at Shanghai), who was reported to argue that ‘if there is a reluctance in British juries to convict where the case rests wholly on native testimony, it is founded on a very justifiable scepticism.’⁹⁹ The use of the jury for all serious criminal trials was retained, and concerns about the biased nature of British juries arose again in the twentieth century. Judge de Saumarez proposed an amendment to the system in 1906, so that the right to a jury trial would not be available in cases where the claimant was Chinese. He stated that juries could not be ‘trusted to approach a question from an independent point of view’, and went on to explain:

If a case is of any public interest it has probably been discussed at the various clubs and a jury comes to Court prejudiced. This is particularly so in mixed cases. The different communities do not coalesce and an unreasoning feeling hostile to Chinese or to some foreign nationality is easily roused. I have noticed it in criminal cases where the complainant is a Chinaman.¹⁰⁰

One of the major problems of the old system under the Hong Kong Supreme Court was thus clearly not remedied by establishing the SCC at Shanghai.

Injustices to Chinese at the hands of violent Britons entered the public discourse in Shanghai and beyond, especially through press reports in Chinese newspapers such as *Shenbao* (申报), which had a wide circulation throughout China from the 1870s.¹⁰¹ Both *Shenbao* and its rival *Shanghai Xinbao* (上海新报) took a regular interest in judicial matters, featuring reports of cases heard in the SCC and also the Shanghai Mixed Court. The 1874 correspondence over the Fawcett case referred to above, which was printed in both *Shenbao* and the *NCH*, was dominated by a debate about the jury system. The Chinese correspondents in *Shenbao* demonstrated a fairly detailed understanding of the British system, and made the case against the use of juries in China, arguing that there were so few British subjects from whom to draw juries, that it was often the case that jury members were acquainted with the defendant and could not be impartial. They called for a

⁹⁹ TNA FO 17/944: ‘Sir E. Hornby’s draft order in council’, report no. 4 by F. Reilly, 28 March 1877.

¹⁰⁰ TNA FO 228/1623: De Saumarez to Satow, 6 April 1906.

¹⁰¹ Rudolf G. Wagner, ‘The *Shenbao* in Crisis: the International Environment and the Conflict between Guo Songtao and the *Shenbao*’, *Late Imperial China*, 20, 1 (1999), 107–43.

system of justice which treated Chinese and foreigners equally, a call which had already been made in *Shenbao* in earlier years.¹⁰² Perceived injustices in individual cases, and also dissatisfaction with institutional inequalities, could therefore have effects far beyond those felt by people in the courtroom who witnessed the way that the trials were conducted. Another manslaughter case, dating from 1872, in which a British subject, Ross, was acquitted having shot a Chinese man, was also reported in the *NCH* as well as *Shanghai Xinbao*. In the *NCH*, it was reported that the Chinese City Magistrate had expressed his anger over the case through 'violent expletives' at the inquest held before the trial, which the *NCH* interpreted as an attempt to curry favour with the Chinese 'rabble' in order to extort compensation from the accused.¹⁰³ The *NCH's* interpretation as to the motivation for Chinese actions in the case cannot of course be taken at face value, but the apparent fact of the provocation to anger of the Chinese present at the inquest, demonstrates the power of court cases involving violence against Chinese to attract official and popular attention and to affect the lived experience of Chinese who encountered British law, directly or indirectly.

The SCC can clearly be seen in this way to have contributed to Shanghai's status as a space where British colonial practice affected the lived experience of residents and visitors. Although the new court may have tended to lead to the issuing of slightly more severe sentences for British subjects in cases of extreme violence towards Chinese, asymmetrical power relations founded on racial difference were clearly still strong factors which determined the way that perpetrators, victims and witnesses were dealt with by the Court, and influenced the way that the court's processes were experienced. Following the establishment of the SCC at Shanghai this effect could be felt in a more direct manner than under the Hong Kong Supreme Court, by Chinese and foreigners at the treaty ports alike.

¹⁰² 'Communications to the "Shun-Pao" Regarding the Fawcett Case', *NCH*, 29 October 1874, pp. 428-9. In 1872, *Shenbao* carried an article which complained of the lack of reciprocity in judicial arrangements at Shanghai, since British consular officials sat in a judicial capacity in the Shanghai Mixed Court, whereas Chinese officials were not given any such role in the SCC. The earlier *Shenbao* call for equality is referred to in Cassel, *Grounds of Judgment*, pp. 76-77.

¹⁰³ *NCH*, 21 December 1870, p. 441; *Shanghai Xinbao*, 22 December 1870, p. 2.

Conclusion

The sense of crisis in official minds in connection with the subject of British crime, 'rowdy' British subjects and especially violence against Chinese, seems to have subsided somewhat from the end of the 1860s. A number of factors can explain this. First, the end of the rebellions in China returned peace to the hinterlands of the treaty ports and allowed the Qing authorities to regain control over the Chinese population there. Thus the opportunities for Anglo-Chinese criminal gangs to engage in creek piracy and other similar activities were reduced. In addition, over time there appear to have been fewer white British seamen at the ports; according to a British official commenting on the reduced need for consular prison accommodation at Shanghai in 1883, this could be attributed to the opening of the Suez canal and the consequent employment of greater numbers of Asian sailors ('so-called 'lascars'), who were said to be far less troublesome.¹⁰⁴ Furthermore, as shown above, those officials most concerned with controlling British crime and violence were often motivated by their task of overseeing relations with China, in a way which fitted with the approach of the superintendents of trade of the 1840s to 1860s. As the effort to improve relations generally declined in subsequent decades, British violence against Chinese, which undoubtedly continued to occur (as the columns of the *NCH* demonstrate), became a lower priority for British diplomats. No major reforms were made to the structures or practices charged with controlling white British crime and criminals after the 1860s. The next serious official panic over control of a population perceived to be violent and deviant, which prompted the mobilisation of British state resources in new ways, would occur early in the twentieth century and would focus on British Indians and the threat they were believed to pose to British and SMC interests. This is addressed in chapter five.

White violence in the late 1850s and 1860s prompted a significant institutional response – most importantly the founding of the SCC in 1865 – but it is notable that the heightened concerns were fairly short lived and focussed only on the

¹⁰⁴ TNA FO 656/58: Office of Works to Treasury, 13 February 1883. The Suez Canal opened in 1869. Martin Wiener also suggests that lascar crews were better behaved on board ship than their European counterparts: Martin J. Wiener, *An Empire on Trial: Race, Murder, and Justice Under British Rule, 1870-1935* (Cambridge, 2009), p. 23.

extreme misbehaviour represented by the 'rowdy class'. A significant degree of violent behaviour on the part of seamen was expected and did not provoke significant concern. However, later chapters will show a high degree of official unease over comparatively smaller populations who represented a challenge in different ways. There was a reluctance to suspend the rights of white British subjects, and severe sentences, especially capital punishment, were rare. Harald Fischer-Tiné has described similar circumstances in India, and argues that 'white subalterns', although subordinated and marginalised, nevertheless enjoyed a 'racial dividend', in that white criminals received favourable treatment compared to that meted out to Indians.¹⁰⁵ Again, subsequent chapters will show that in later years, despite the growth of more elaborate and substantial court structures and procedures, judges were far more comfortable in altering practices in ways which did not conform to the law in respect of a non-white target population such as Indians.

This chapter has shown that the development of British state structures in China was shaped to a large extent by the presence and activities of British subjects who committed crime in China. In particular, the SCC was established at Shanghai during a period of heightened official alarm over violent crime committed in particular by the problem population referred to as the 'rowdy class'. The new institution was created to address this problem in the context of the new policy of cooperation then being pursued by the British minister and the FO. However, although British officials in China, including Hornby, first judge of the SCC, made strenuous efforts to control British violence and crime, they did so in different ways, with different motivations and with different consequences for the shape of British expansion in China. Mary C. Wright has suggested that Edmund Hornby and the SCC can be viewed as part of the apparatus for British cooperation, on the basis of an 1865 judgment in which Hornby allowed the British Crown to prosecute a British subject on behalf of the Chinese government.¹⁰⁶ This chapter, together with chapter one, has offered a more nuanced view of the court's role,

¹⁰⁵ Harald Fischer-Tiné, 'Hierarchies of Punishment in Colonial India: European Convicts and the Racial Dividend, C. 1860-1890', in Harald Fischer-Tiné and Susanne Gehrmann (eds.), *Empires and Boundaries: Rethinking Race, Class, and Gender in Colonial Settings* (Abingdon, Oxon, 2009), 41-65.

¹⁰⁶ The case was *R. v. Reynolds and Holtz*. Wright, *The Last Stand of Chinese Conservatism*, p. 33.

particularly in the key Hornby years, which shows that the long-term impact of the creation of the court was the establishment of a fairly independent institution at Shanghai, frequently in conflict with British officials based at the Legation in Beijing, and able to undermine significant elements of the cooperative policy and promote the colonial expansion being pursued by the SMC. Again, as already argued in chapter one, the establishment of the SCC at Shanghai bolstered the SMC, a body which generally pushed against Chinese government authority and undermined its sovereignty, not least by putting into place a very supportive British official, in particular in the time of Hornby, who was a staunch advocate on its behalf.

Jürgen Osterhammel has summarised the colonial nature of relations at Shanghai:

The junior British clerk was a sahib, the wealthy, respectable Chinese merchant or comprador was not. Power, status, and colour (the Chinese had not been considered 'yellow' until early in the nineteenth century) correlated in ways characteristic of colonialism all over the world.¹⁰⁷

Such asymmetrical power relations clearly existed in the courtroom, where even low status white Britons could be assured that British juries would treat them leniently. The analysis in this chapter of the way that British violence against Chinese was handled by the SCC therefore shows one way in which the British state's institutions played a significant role in the making of the treaty ports into colonial spaces. Once the institution of the SCC was established in China, Chinese people were forced into a greater degree of engagement with British law generally and court procedures in particular, and Chinese officials were allowed only very minimal involvement beyond watching the trials.¹⁰⁸ This all entailed a very different kind of pedagogical project from that which was envisaged by Bruce or Alcock, who as ministers in the 1860s favoured working together with the Chinese, albeit in the hope that they could influence the development of Chinese

¹⁰⁷ Jürgen Osterhammel, 'Britain and China, 1842-1914', in Andrew Porter and William Roger Louis, (eds.), *The Oxford History of the British Empire*, Vol. 3: *The Nineteenth Century* (Oxford, 1999), p. 164.

¹⁰⁸ Cassel suggests that Chinese officials may at first have been allowed a meaningful role in trials on the basis that the *zhixian* (district magistrate) was reported to have sat on the bench alongside Hornby in the trial of George discussed above. However, there is no conclusive evidence of any influential role being played in the trial by any Chinese official. It seems very unlikely that Hornby would have been prepared to accept such an intervention, and in any case the verdict was given by a jury, over whom even the British judge had limited influence. Cassel, *Grounds of Judgment*, p. 74.

governance, including law, through what were conceptualised as co-operative actions. In this way they were working within a mode of thought which can be classed as the 'civilising mission', one kind of British approach to colonial relations. Despite the intentions of the ministers, however, the SCC at Shanghai offered Chinese – both in person and through reading about cases in the increasingly important Shanghai Chinese press – a sharp lesson in the 'rule of colonial difference', rooted in a view towards China and the Chinese involving much starker inequality.¹⁰⁹ There was no single official British view on the correct approach to dealing with Chinese organisations and Chinese people, a theme which is also prominent in the following chapter.

¹⁰⁹ This is of course Partha Chatterjee's well known phrase. Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton, N.J., 1993), p. 16.

Chapter Three - Recognition and Protection I: Chinese British subjects

In 1905 the *North-China Herald's* correspondent in Jinan reported a minor diplomatic upset involving German officials in Shandong, who had complained about the appointment by the Chinese authorities of William Quincey, an ethnic Chinese 'who they supposed to be an Englishman,' as head of the Jinan police. This would have contravened Germany's claim to be the preeminent foreign power in Shandong, where Jinan is located. The Chinese governor responded to the Germans, the report stated, with the information that 'though Mr Quincey might be said to be somewhat anglicised, he nevertheless was a proper Chinese,' and the correspondent went on to explain:

Many of your readers doubtless know Mr Quincey and are aware that he is truly Chinese, having been born in Soochow, from which place he was taken to England by General Gordon, after the Taiping rebellion, and educated there, becoming while abroad a naturalised British subject. He dresses in European clothes, wears no queue and speaks excellent English.¹

William Quincey took up his post and moved to Jinan, whereupon this 'truly Chinese' man registered himself and his family as British subjects at the consulate there.²

This example hints at a number of elements of the confusion surrounding identity and national status which would surface repeatedly in the attempts by the British state to establish clearly who it should register and protect as British subjects in China, elements including: international relations, legal questions of dual nationality and the status of naturalised British subjects, and also moral and philosophical questions such as essentialised versus performative notions of belonging – the relative importance of such criteria as descent-based ethnicity, cultural orientation (including style of dress), education or linguistic competence in determining national status and access to British protection. However, at the same time as it highlighted common issues surrounding the national status of ethnic Chinese with British nationality, the case of William Quincey was

¹ 'Chinanfu: a wise appointment,' *NCH*, 12 May 1905, p. 315.

² TNA FO 228/2156: duplicate foil of certificate of registration for William Quincey, 21 February 1906.

exceptional. Quincey had been favoured by a British hero, General 'Chinese' Gordon, and this propelled him to a position where exceptions to the usual rules could be made. This no doubt helped make possible his simultaneous enjoyment of two national statuses and the advantages available from both.

While the previous chapter dealt with laws and policies to deal with problems that were, at least in part, anticipated by the British state before the opening of the treaty ports, this chapter turns to a problem population for which officials were at first unprepared and which only gradually began to trigger a considered official response: ethnic Chinese with British nationality (referred to hereafter as Chinese British subjects). Chinese British subjects, whose British status generally derived from a connection with British colonies such as the Straits Settlements or Hong Kong, were a small but prominent group who sought registration at British consulates and the protection of the British state in China under the treaty system. This chapter will focus on this group and explore what factors determined who would be recognised and protected by the British state in China. Chinese British subjects, of whom there were probably never more than a few hundred registered at British consulates in China, prompted a great deal of official discussion, debate and controversy between British officials, and created a heavy workload for British consuls and diplomats, out of all proportion to the numbers involved.³ As with the 'rowdy class' described in the previous chapter, it was primarily the trouble they created for British officials in their relations with the Chinese government which prompted their identification as a problem population which called for an official response. However, whereas the last chapter dealt with a group who the state was determined to supervise and place under its control, Chinese British subjects represented a problem population in most cases through their attempts to insist that the British state should intervene in their affairs, by recognising them and interceding on their behalf in disputes with individuals, companies and especially the Chinese state, the officials of which generally regarded them as Chinese and

³ Based on figures in FO files (TNA FO 228/2156), Murakami Ei calculates that the total number of registered Chinese British subjects in China was 170 in 1905, when the British rules determining who could register were at their most relaxed since the 1840s and 50s. See Murakami Ei, 'The Question of Chinese with British Nationality in Late-Qing Xiamen,' in Mori Tokihiko (ed.), *The Social System of Twentieth-Century China* (in Japanese) (Kyoto, 2011), p. 176.

subject to Chinese law. Unlike the previous chapter, this process was less a matter of discipline through the courts; rather it was a question of the British state determining its approach towards this group, a process which had consequences for the nature and extent of British expansion in China.

Before the treaty system began to decline in the late 1920s, Chinese British subjects in the treaty ports operated within a context where the notion had increasingly taken root that the rights and privileges of British settlers in China were part of their 'birthright'.⁴ One contemporary view of this concept can be understood as based on racial thinking in Britain in the late nineteenth and early twentieth centuries. Rights and freedoms guaranteed by British law and government were sometimes associated with ideas of 'Anglo-Saxon' superiority, and empire could be justified by the notion that 'Anglo-Saxon' Britons were spreading enlightened government through imperial expansion; but the people encountered overseas were far from ready to enjoy all 'Anglo-Saxon' rights and liberties.⁵ So in nineteenth-century Hong Kong, despite the institutions of justice in the colony closely resembling those in Great Britain, draconian measures specifically to control the Chinese population were put in place.⁶ In mainland China a differentiation which in practice corresponded in some ways to that in Hong Kong existed through the system of extraterritoriality, which addressed the perceived inadequacy of Chinese justice by removing British subjects, and nationals of other foreign treaty powers, from Chinese jurisdiction. This guaranteed for British subjects enjoyment of what were seen as the rights and safeguards of British justice, together with other benefits (as well as restrictions) under the treaties. British officials were however then faced with the prospect that what many saw as this 'birthright' of 'Anglo-Saxon' Britons in China could be acquired by ordinary ethnic Chinese, even without Quincey's influential connections, simply by virtue of their having been born in a British colony – all that was necessary to be a British subject under the common law. There was an alternative contemporary view, which looked towards a notion of imperial

⁴ Bickers, *Britain in China*, p. 131.

⁵ Paul B. Rich, *Race and Empire in British Politics* (Cambridge, 1990).

⁶ Christopher Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880* (Richmond, 2001).

citizenship bringing benefits which were the 'birthright' of all who were British subjects; this was a position at times espoused by officials in the Straits Settlements, and later too Hong Kong, towards their Chinese colonial subjects, who they often supported in claiming British protection in China. I argue in this chapter that tensions over what it meant to be a British colonial subject were heightened and brought to the fore in China under the treaty system which had not been designed to differentiate among British subjects, laying bare intercolonial variations in attitudes, practices and policies.⁷ George Steinmetz has argued, in the case of German colonialism, that officials based at different locations adopted practices towards the colonised informed by an ethnographic-like reading of the culture and character of the colonised.⁸ I make use of his insight here and argue that British officials took positions based on both assumed ethnocultural and contextual understandings of groups such as Chinese British subjects, so that the same populations of colonial subjects were treated differently by British officials in different places. Thus the multipolar nature of empire in the British case could lead to different practices on the ground, and mobile populations laid bare the contradictions between policies at different locations.

In this chapter I begin by providing as background a sketch of the Chinese British community in China over the course of the first three quarters of the treaty century. I then discuss British nationality law, dual nationality and international law as they – at least in theory – related to Chinese British subjects in China. In the subsequent section of this chapter I describe the actions and attitudes of British officials towards Chinese British subjects in the early decades of the treaty system, then I focus in more detail on two points in time when key policies affecting Chinese British subjects were put into place by the British authorities: the mid-1860s and the first decade of the twentieth century. Officials situated in a range of

⁷ A similar debate took place over intra-imperial immigration, at the beginning of the twentieth century, between two sides holding broadly the same opposing views as were visible in the debate over Chinese British subjects; see Daniel Gorman, 'Wider and Wider Still?: Racial Politics, Intra-Imperial Immigration and the Absence of an Imperial Citizenship in the British Empire,' *Journal of Colonialism and Colonial History*, 3, 3 (2002).

⁸ George Steinmetz, 'The Colonial State as a Social Field: Ethnographic Capital and Native Policy in the German Overseas Empire before 1914', *American Sociological Review*, 73, 4 (2008), 589–612.

centres of British power, including the Foreign Office in London, the Legation in Beijing, the SCC at Shanghai and the colonial governments of Hong Kong and the Straits Settlements engaged with the issue of Chinese British subjects and often held contradictory views. In particular, I will be looking at the tension between legal definitions and other understandings of belonging to Britain held by the various official actors, how this affected British policy and actions on the ground, and how the latter in turn influenced the treaty ports and Anglo-Chinese relations.

Chinese British subjects in China

When people in Britain today think of ethnic Chinese British nationals, they generally think first of Hong Kong, but in fact for much of the treaty century the Straits Settlements appears to have been the largest single source of Chinese British subjects who registered themselves at British consulates in China. British consular records from 1903 show that the largest numbers of Chinese British subjects were registered in the consulates at Xiamen in Fujian and Shantou in Guangdong.⁹ Of the 50 registered at Xiamen, 32 were born in the Straits Settlements, and only one was born in Hong Kong.¹⁰ Up to the early years of the twentieth century, the only other port where significant numbers of Chinese British subjects were registered was Shanghai. The figures given by the consul there in 1903 also show that the majority were from the Straits Settlements: of 22 registered, the claim to British registration of thirteen of them derived from a connection with the Straits Settlements, whereas only four were British through a connection with Hong Kong.¹¹ It is important to recognise that these figures reflect the numbers who were registered – there were many Chinese British subjects who did not register, or who were refused registration by consuls. There is no way of establishing how many such Chinese British subjects there actually were in China at any point, and it is possible that proportionally more of those who did not register were from Hong Kong.

⁹ In 1903 Minister Ernest Satow called for returns from the main coastal ports giving details of the numbers registered. There were 50 at Xiamen, 33 at Shantou and 22 at Shanghai. TNA FO 405/172: Confidential print, Satow to Lansdowne, 25 November 1903.

¹⁰ TNA FO 405/172: Confidential print, Enclosure 7 in Satow to Lansdowne No. 21, 25 November 1903.

¹¹ TNA FO 405/172: Confidential print, Enclosure 2 in Satow to Lansdowne, 25 November 1903.

It was not until 1905 that the numbers registered at Guangzhou began to grow to any significant size (from two registered in 1903 the figure had grown to 49 by 1908).¹² The pattern of growth in the number of Chinese British subjects registered at Guangzhou presumably reflected the fact that most who registered there came from Hong Kong, which became a more significant source of registered Chinese British subjects from the early twentieth century onwards. Although a number of factors contributed to this, the principal cause was a change of policy in 1904. Between 1867 and 1904, the rule had been that children born in a British colony or possession, of Chinese parents who were not British subjects, were not entitled in China to be treated as British subjects 'as against the authorities of China.'¹³ From 1904 this was altered so that British recognition and protection was extended to include Chinese born in a British possession whose parents were not British subjects (i.e. not born or naturalised in British territory), subject to certain conditions.¹⁴ The change of policy dramatically increased the number of Chinese British subjects eligible for protection in China, especially from Hong Kong, since more recent Chinese migrants' children born in the colony of Hong Kong, or other British colonies or possessions, could now qualify for British protection in China, and many of them no doubt registered at Guangzhou. The 1867 rule had worked to preclude registration of Chinese from Hong Kong more than it did those from the longer-established Chinese communities in the Straits Settlements, where there was a greater number of Chinese who were born on British soil to parents who were themselves natural-born or naturalised British subjects and who were thus eligible for registration and protection under the 1867 rule.

It was a repeated complaint of British consuls, over almost the whole course of the treaty century, that Chinese British subjects were indistinguishable from other Chinese, and even concealed their British status until they were in trouble. Xiamen consul George Sullivan's comment in 1850 is typical:

¹² TNA FO 228/2157: Fox to Jordan, 22 October 1908.

¹³ Hornby, *Instructions to Her Majesty's Consular Officers*, p. 3.

¹⁴ Peking circulars to consuls of 22 August and 19 October 1904, see A. G. Major, *A Compendium of Instructions to H.M. Consular Officers in China*, vol. 1 (Beijing, 1935), p. 132.

They mingle so completely with the natives as to be in no way distinguishable from them and sink the character of British subjects entirely until the consequences of some scrape or family feud compel them to claim protection, or unless it suits them to assume it for purposes of menace and extortion.¹⁵

However, it was also reported in 1866 that Chinese British subjects advertised their businesses as *Yingshang* (英商), 'British firms', at Xiamen.¹⁶ It seems likely that some were more open about their British status than others, according to their circumstances and the nature of their business.

There is evidence that at least some Chinese British subjects, in particular Chinese from the Straits, were embedded to an extent in wider British treaty port social and economic life – their connection with Britain in China was not always, as Sullivan suggested, purely a question of registration as British in order to secure protection when their social or economic engagements with other Chinese or the Chinese authorities went wrong. In the early years, they appear to have formed another strand alongside the Cantonese described by Fairbank as Britain's 'shock troops', so essential to the British during the Opium War and afterwards when the first five ports were opened.¹⁷ It was not uncommon for Straits Chinese, able to speak English through education and upbringing in the Straits, to act as linguists or clerks in British consulates. Consular linguists from the Straits were employed at Xiamen in the 1840s and at Shanghai and Danshui in the 1860s.¹⁸ They also worked for the Customs service or British firms, again often using their linguistic skills. Chen Qingzhen, who was beaten to death in Xiamen by the Chinese authorities in 1851 for allegedly leading the local Small Sword Society, had previously worked as an 'English clerk' for M. C. Morrison (interpreter at the consulate) and was at the time of his death employed by Jardine, Matheson & Co.¹⁹ Another example is Penang-born registered British subject Kum Allum who worked in the 1870s for W. V. Drummond, a prominent British barrister in

¹⁵ TNA FO 228/111: Sullivan to Bonham, 28 November 1850.

¹⁶ TNA FO 17/1258: Swinhoe to Alcock, 21 December 1866, enclosed in Alcock to Foreign Office, 7 February 1867.

¹⁷ Fairbank, *Trade and Diplomacy on the China Coast*, p. 219.

¹⁸ Chen Qingxing at Xiamen, whose father was a sago manufacturer in Singapore, see TNA FO228/84: Layton to Davis, 6 March 1848; Leong C. Weng at Shanghai and Ung Pock Chuan at Danshui, both from Penang, see BPP, HC, *Reports on Consular Establishments in China*, pp. 14, 87.

¹⁹ TNA FO 228/125: Sullivan to Bonham, 4 January 1851.

Shanghai, as an interpreter and also engaged in business deals of his own.²⁰ His son Y. S. Kumsoo had property, trading and manufacturing interests in Shanghai, and was also a Shanghai ratepayer, eligible to vote in Council elections.²¹ Gu Hongming (referred to in contemporary reports as Kaw Hong Ping), who was born in Penang to a family long established in the Straits and would later become a well-known Chinese intellectual, became, on return from his education in Britain, Minister Thomas Wade's private secretary in 1879.²² His brother, businessman Gu Hongde (known at the time as Kaw Hong Take), is pictured with his wife in one of British Customs official R. F. C. Hedgeland's photographs, taken in 1898 of the small group of foreign residents at Haikou. They are the only Chinese people in the group of 16 in the picture, on the key to which someone has made the annotation 'Bri subject'.²³

The likes of Kum Allum and Y. S. Kumsoo could perhaps be viewed more as treaty port settlers rather than simply returned migrants, or members of the Chinese treaty port elite, and they were interested in the continuation of the British-dominated Shanghai International Settlement along with the white British settlers more prominent in the literature. They perhaps represented an overseas outpost of the 'English-educated professional class' instrumental in founding the Straits Chinese British Association in the Straits Settlements.²⁴ It is clear from consuls' reports that Chinese British subjects claiming registration at consulates were a culturally-diverse group and could range from fluent English-speaking Christians, such as T. W. Song, who served on a jury in the SCC in Shanghai in 1872, to Cheah Ng Oh, described by Amoy consul A. E. Easton in 1922 as 'a nice-mannered middle-

²⁰ 'Chang Van Ho and others v. the C. N. Co.' *NCH*, 13 April 1876, p. 348. 'Chien Pao-Shan v. Kum Allum,' *NCH*, 14 February 1879, p. 153.

²¹ TNA FO 671/449: S. Houston McKean to Consul-General E. Fraser, 17 September 1920; TNA FO 671/447: *The Municipal Gazette* (Shanghai), Report of Annual Meeting of Ratepayers, 15 April 1921, p. 21.

²² 'Summary of News', *NCH*, 13 May 1879, p.458.

²³ Historical Photographs of China website, <http://hpc.vcea.net/>, image ID Nos. 16558 and 16560, accessed 6 November 2013; for more details on Gu Hongming and his family see Lo Hui-min, 'Ku Hung-Ming: Homecoming,' *East Asian History*, 6 (1993), 163–82.

²⁴ Brenda S.A. Yeoh, *Contesting Space in Global Singapore: Power Relations and the Urban Built Environment* (Singapore, 2003), p. 76.

class Chinese of the old type, unable to read, write or even speak a word of the English language.'²⁵

Many Chinese British subjects in China were engaged in commercial activities of some sort, often based on long-standing patterns of trade between South China and Southeast Asia which predated the opening of the treaty ports.²⁶ In 1878, the Straits Chinese community of Shanghai compiled a list of the Chinese British subjects known to them, giving details of their occupations. Of the forty-four listed, there were twelve stated to be either merchants or 'brokers', eleven clerks (six of whom worked for the China Merchants Steam Navigation Company), ten in the customs service, six officials in Chinese government service, two compradors, one employee of the 'torpedo manufacturing office' at Tianjin, one shopkeeper and one school master.²⁷ The range of commercial activities was fairly broad. Some Chinese British subjects invested in manufacturing and service industries in China. In 1881 a factory making iron pans for export was established by registered Straits Chinese British subject See Eng Wat at Xiamen.²⁸ Y. S. Kumsoo owned a cigar factory in the 1920s, among other business interests.²⁹ Gu Hongde engaged in a range of business activities at Fuzhou and other ports, including shipping.³⁰ Among the most prominent Chinese businesses in early twentieth century Shanghai were the four companies owned by Australian Chinese which dominated Shanghai's retail industry, Wing On, Sincere, Sun Sun, and Dah Sun.³¹ Consuls at Guangzhou were concerned to control the use of the British flag on vessels operating in Guangdong, owned or operated by Chinese British subjects or Chinese residents of Hong Kong, some of which were believed to be smuggling salt and

²⁵ 'R. v. William Richard Parker', *NCH*, 15 June 1872, p.486; TNA FO 671/437: copy of Easton to Alston, 26 October 1922.

²⁶ Carolyn L. Cartier, *Globalizing South China* (Oxford, 2001), p. 134.

²⁷ TNA FO 17/1258: enclosure in Davenport to Fraser, 18 April 1878. It should be pointed out that working in the customs was a form of Chinese government service, although it was listed separately by the Shanghai Straits Chinese community, indicating the way that the foreign-dominated customs was viewed very differently from mainstream Chinese officialdom.

²⁸ TNA FO 228/696: Forrest to Wade, 5 April 1882.

²⁹ TNA FO 671/449: S. Houston McKean to Shanghai Consul-General Fraser, 17 September 1920.

³⁰ 'Arbitrary Action by a Chinese Official', *NCH*, 22 February 1881, p. 178.

³¹ John Fitzgerald, 'Equality and the "Unequal Treaties": Chinese Émigrés and British Colonial Routes to Modernity,' in Goodman and Goodman (eds.), *Twentieth Century Colonialism and China*, p. 190.

opium.³² Another case dealt with by the consul at Guangzhou involved a Hong Kong Chinese British subject who wished to set up a bank there in 1905.³³

There is evidence from a number of sources of the participation of Chinese British subjects in the activities of rebellious 'secret societies' such as the Small Sword Society in China. The earliest case was perhaps that of Chen Qingxi, who Xiamen consul Layton described in 1850 as 'one of the heads of the Triad Society in Amoy ... a dangerous character here.'³⁴ In 1853, during the Small Swords' takeover of Shanghai, the *NCH* reported that the leaders of the rebels were 'surrounded by a number of young men from Singapore, who speak remarkably good English; one of whom stood up boldly before some foreign visitors, saying "I am a British subject."' ³⁵ In 1866, as Minister Rutherford Alcock began to introduce the first concerted effort to exercise control over Chinese British subjects by warning them that they would be punished if they domiciled themselves in the interior in violation of the treaties, one of the objectionable activities he referred to was that they 'conspire with secret societies against the Chinese government.' ³⁶ Engagement in Chinese politics and power struggles was not limited to 'secret societies', as Chinese from British colonies provided support to the Tongmenghui and later the Guomindang.³⁷ When they appeared in political roles after the collapse of the Qing they caused as much, if not greater, discomfort to the British than they had done as anti-Qing rebels and revolutionaries.³⁸

There is a little evidence of self-organisation by Chinese British subjects in China outside existing 'secret societies', descent groups or guilds. A group calling themselves the British Chinese Community of Swatow [Shantou] organised a party to bid farewell to Consul E. G. Jamieson in 1913. This was reported in the *NCH*,

³² TNA FO 371/13203: appendix to memorandum of J. T. Pratt, 4 February 1928.

³³ TNA FO 228/2156: Scott (Guangzhou) to Hong Kong government, 24 October 1905.

³⁴ TNA FO 228/111: Layton to Bonham, 15 January 1850.

³⁵ 'Riots in the City of Shanghae', *NCH*, 10 September 1853, p. 22.

³⁶ TNA FO 17/1258: Alcock to consuls, circular No. 13 of 26 November 1866.

³⁷ Howard Lyon Boorman, Richard C. Howard, and Joseph Kai Huan Cheng, *Biographical Dictionary of Republican China*, Vol. 3 (New York, 1971), p. 166.

³⁸ Involvement in Chinese politics appears to have been one of the main reasons why Chen Hanming (discussed below) was refused registration as a British subject in 1925, see TNA FO 671/460: Pratt (Shanghai) to Peking, 20 January 1925.

which gave details of speeches, refreshments, and names of those participating. Sim Kye-Pang, for the British Chinese community, expressed to the departing consul their 'high appreciation for all your good and becoming acts in safeguarding our interests in this land where justice is considerably at a discount.'³⁹ In this way he not only signalled loyalty to Britain but also made clear that Chinese British subjects shared, in common with other Britons in China, a low opinion of Chinese law and governance.

British nationality law and Chinese British subjects

For most British subjects, claiming British recognition in China was a fairly straightforward matter. Most British subjects derived their status from the common law doctrine that birth 'within the dominions of the crown of England' made them natural-born British subjects.⁴⁰ Apart from certain minor exceptions, any child, regardless of parentage, born in colonies such as Hong Kong or the Straits Settlements was therefore a natural-born British subject. Statute law had in 1773 added to this group of natural-born British subjects anyone not born in Britain or a British possession whose father or grandfather was a British subject born on British soil.⁴¹ Sojourners and settlers in China who had themselves been born in Britain or any British possession (for example British India), together with their children and grandchildren born abroad, were therefore natural-born British subjects, irrespective of race or ethnicity. In 1914 the law was altered so that unlimited generations born abroad in places where 'His Majesty exercises jurisdiction over British subjects' were considered to be natural-born British subjects, and this applied to China under extraterritoriality.⁴² However, transmission of British nationality from parent to child was only ever possible

³⁹ *NCH*, 27 December 1913, p. 973.

⁴⁰ William Blackstone and John Taylor Coleridge, *Commentaries on the Law of England: Book the Third* (London, 1825), p. 366.

⁴¹ Rieko Karatani, *Defining British Citizenship: Empire, Commonwealth and Modern Britain* (London, 2003), p.41.

⁴² 'British Nationality and Status of Aliens Act, 1914', Sec. 1 (1). Available at http://www.legislation.gov.uk/ukpga/1914/17/pdfs/ukpga_19140017_en.pdf [accessed 23 January 2018].

when the child was born to married parents – illegitimate children born in China to British fathers were therefore, according to British law, not British subjects.⁴³

An individual could become a British subject through naturalization either in Britain or in a British colony or possession. The latter was known as 'local' or 'colonial' naturalization and the status it conferred was effective only within the territory where it had been granted. It was used extensively in many British colonies eager to attract settlers.⁴⁴ Naturalization was granted to Chinese in the Straits under the Indian Naturalization Act 30 of 1852 from at least as early as 1864, and when the Straits became a crown colony in 1867 a naturalization ordinance was issued the same year.⁴⁵ Hong Kong did not naturalise foreign residents until the 1880s, and then (at least in the case of Chinese) the privilege was only granted to members of the elite who had been given roles in the administration.⁴⁶ Despite the clear position under English law at the time, that local naturalization was only effective in the colony or possession where it had been granted, naturalised Chinese from the Straits were frequently reported to arrive in China with letters or certificates from Singapore, stating that they were entitled to protection as British subjects.⁴⁷ There are also many examples of consuls registering and protecting naturalised Chinese British subjects in apparent ignorance of the law.

It was possible for an entire population to become British subjects following the conquest or cession to Britain of the territory where they lived. In the case of Hong Kong, it was confirmed by the British government's law officers in 1843 that the inhabitants there at the time of cession became British subjects, although sources differ as to whether the population of Hong Kong at that time amounted to any

⁴³ Sir Francis Taylor Piggott, *Nationality, Including Naturalization and English Law on the High Seas and beyond the Realm* (London, 1907), p. 64.

⁴⁴ Karatani, *Defining British Citizenship: Empire, Commonwealth and Modern Britain*, pp. 52-54.

⁴⁵ TNA FO 228/405: enclosure in Swinhoe to Alcock No. 3, 15 May 1866; Ong Siang Song, 'Are the Straits Chinese British Subjects?', *Straits Chinese Magazine*, 3 (1899), 61-7, p. 62.

⁴⁶ Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880*, p. 54. William Quincey was among the first Chinese naturalised in Hong Kong. He worked in the Hong Kong police before working in police forces in mainland China. TNA FO 228/2157: Fraser to Jordan No. 79, 21 December 1908.

⁴⁷ TNA FO 228/405: Swinhoe to Hornby, 15 June 1866; TNA FO 17/1259: Forrest to Straits Settlements No. 14, 21 February 1888.

significant number, estimates ranging from 'a few fishermen' to a few thousand.⁴⁸ The difficulty of establishing who could qualify for British status under this rule was much increased by the transient nature of the population of Hong Kong, many of whom lived on boats.⁴⁹ The British government's law officers confirmed that when the colony of Hong Kong was enlarged, by the transfer of Kowloon and later the New Territories to British rule, the inhabitants at the time automatically became British subjects.⁵⁰

Dual nationality, or 'double allegiance' as it was often termed in nineteenth-century texts, was a recognised concept within the system of 'international law' which had evolved between European states, and it was a key complicating factor for Chinese British subjects in China.⁵¹ It potentially applied to all those Chinese British subjects (the vast majority) whose British nationality did not stem from domicile in a British possession at the time of its transfer to British sovereignty. From the perspective of the British state, the answer to determining their status in China therefore depended not only on British common and statute law, but also on the question of whether international law should be followed and they should be treated as dual nationals.

Under international law as espoused by the British government, those having a double allegiance, arising for example through being born to foreign parents in a country where nationality was bestowed on the basis of birth (such as Britain), were not entitled to be considered as nationals of the country of their birth when in the country of which their parents were nationals, provided that under that country's laws they were considered to have inherited nationality from their

⁴⁸ The low estimate is then Hong Kong Attorney General Julian Pauncefote's, given in 1866. Elliot and Bremer had in 1841 claimed the larger figure. See Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880*, pp. 54-5.

⁴⁹ Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880*, p. 73.

⁵⁰ For Kowloon see TNA FO 17/1258: Law Officers to Foreign Office, 29 May 1867; for the New Territories see TNA FO 371/13203: appendix to memorandum of J. T. Pratt, 4 February 1928, p. 32.

⁵¹ For a contemporary discussion of double allegiance see for example the memorandum of Sir W. Harcourt, in BPP, HC, *Report of the Royal Commissioners for inquiring into the laws of naturalization and allegiance: together with an appendix containing an account of British and foreign laws, and of the diplomatic correspondence which has passed on the subject, reports from foreign states, and other papers*, vol. 25, [c.4109], (1869), pp. xii-xv.

parents.⁵² It was understood that under Chinese law, even before it was actually codified in the first Chinese nationality law in 1909, Chinese nationality passed through descent, irrespective of where the child was born, which would make the children of Chinese emigrants to British territories Chinese subjects.⁵³ It is important to remember the legal point that if Chinese British subjects were not protected in China this was not necessarily a denial of their legal status as British subjects – it was rather an assertion that their other nationality (or allegiance) took precedence within Chinese territory – but the practical result would be a denial of their right to the treaty privileges and other advantages available to British subjects in China.

In 1850, Foreign Secretary Palmerston made it clear that Britain would not apply international law in all cases of dual nationality. He ruled that children born in India (and thus British subjects by birth) whose parents were Persian subjects would be eligible for British protection even if they took up residence in Persia, contrary to the usual rule of international law:

considering the different and peculiar habits and practices of Asia, it seems to me that, considering that all persons born in British India, of whatever parents, are entitled to be regarded as British subjects. . . it would be fair and right to extend to such persons, even in Persia, the benefits of being placed under British protection.⁵⁴

The question of whether principles of international law should apply to British policy on Chinese British subjects in China was considered by the Foreign Office on a number of occasions. At the level of principle, it was fundamentally a question of the degree to which the Chinese government should be treated as a ‘civilised’, reasonable counterpart, fit to join the ‘family of nations’. The FO’s conclusions, based on inconsistent advice from the law officers, varied considerably over time. Other considerations which came into play in determining British policy included issues of practical administration, both at the treaty ports and in the nearby

⁵² Despatch of Lord Palmerston, 4 September, 1850, in BPP, HC, *Report of the Royal Commissioners for Inquiring into the Laws of Naturalization and Allegiance*, p.71.

⁵³ Chee-Beng Tan, *Routledge Handbook of the Chinese Diaspora*, Routledge Handbooks (Abingdon, Oxon, 2013), p. 64; Fairbank, *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports, 1842-1854*, p. 216.

⁵⁴ Lord Palmerston, in BPP, HC, *Report of the Royal Commissioners for Inquiring into the Laws of Naturalization and Allegiance*, p.71.

colonies of Hong Kong and the Straits Settlements, and also ideas about the nature and usefulness of Chinese people as British subjects.

British officials and Chinese British subjects in the 1840s and 1850s

The early policies of the 1840s were made by the superintendent of trade based in Hong Kong, who seems not to have felt it necessary to refer such matters to London, indicating that they were perhaps relatively uncontroversial at that time. Policies were formulated in response to incidents reported by the consuls at the open ports, who were simultaneously dealing with a wide range of issues in establishing the British presence in China under the new treaties.⁵⁵ Incidents involving Chinese British subjects did not lead to policy discussions of the question of the status of Chinese British subjects in China. It was at first taken for granted that they were eligible for protection if born on British soil, and Bonham affirmed this stance in 1849, with the important qualification that protection would not be given to dual nationals living outside the treaty ports.⁵⁶ Consuls at Ningbo and Xiamen in the 1840s intervened with local Chinese officials on behalf of Chinese British subjects and their interests, even when they were engaged in dubious activities such as smuggling or crimping.⁵⁷ Given the context, this is not as surprising as it may seem. In the 1840s, consuls were still pushing hard on many fronts to establish themselves in the ports and to ensure adherence to the treaties by the Chinese authorities. At Ningbo, for example, Robert Thom was embroiled in a bitter dispute with the local Chinese authorities over the trial of a Chinese man (not a British subject) who had served the British during the war.⁵⁸ Chinese official complaints regarding jurisdiction over Chinese British subjects were not very seriously considered. When the superintendent of trade did concern himself with Chinese British subjects, he was preoccupied with practicalities, for example suggesting the adoption of European clothes as a way to signal to the Chinese

⁵⁵ Fairbank, *Trade and Diplomacy on the China Coast*, pp. 200-25; P.D. Coates, *The China Consuls*, pp. 16-27.

⁵⁶ TNA FO 228/125: Bonham to Amoy, 1 May 1849, quoted in Sullivan to Bonham No. 16, 25 January 1851.

⁵⁷ On smuggling, see TNA FO 228/60: Layton to Davis, 2 September 1846; on crimping, see Fairbank, *Trade and Diplomacy on the China Coast*, p. 216. Crimping was the term used to refer to the recruiting of migrants for indentured labour overseas, often using deception or coercion.

⁵⁸ TNA FO 228/42: Thom to Davis, 8 July 1844.

authorities that Chinese British subjects were not within their jurisdiction.⁵⁹ John King Fairbank's summary of the position with regard to Chinese British subjects that 'True to its legal principles ... the British government undertook to protect them', portrays accurately the official practices adopted by the superintendent and consuls towards Chinese British subjects in the first decade or so of the treaty system, but it is misleading as to the motivations which lay behind protecting Chinese British subjects.⁶⁰ If the British had been true to the legal principles of the system of international law which they and other powers were establishing, they would have protected far fewer Chinese British subjects in China than they did.

An early consular voice raising questions about Chinese British subjects as a problem population was George Sullivan at Xiamen who, in 1850, advised Bonham, in a despatch regarding the certificates issued to naturalised Chinese British subjects by the Straits Settlements government, that 'It is by no means desirable to make the class of Anglo Chinese subjects more extensive than the law allows it to be.'⁶¹ Sullivan had witnessed the growth of 'secret society' activity in Xiamen, in which Chinese people from the Straits were deeply involved, which would culminate in the takeover of the city by the Small Sword Society in 1853.⁶² The first major confrontation between Britain and China over Chinese British subjects arose through 'secret society' activities in Xiamen, when Chen Qingzhen was beaten to death in 1851 by the Chinese authorities there, who accused him of leading the Small Sword Society.⁶³ The case was escalated to Bonham, who took it up fairly energetically with the Imperial Commissioner Xu Guangjin, even threatening deployment of a British navy steamer.⁶⁴ After several rounds of correspondence between Bonham and Xu, however, instructions were received from Palmerston that it was 'neither necessary nor expedient to press the matter

⁵⁹ TNA FO 228/42: Davis to Thom, 1 August 1844.

⁶⁰ Fairbank, *Trade and Diplomacy on the China Coast*, p. 215.

⁶¹ TNA FO 228/111: Sullivan to Bonham, 28 November 1850.

⁶² Huang Jiamo, 'Yingren yu Xiamen Xiaodaohui Shijian' 英人與廈門小刀會事件 ('The British and the Small Sword Uprising at Xiamen'), in *Jindaishi Yanjiusuo Jikan* 近代史研究所集刊, vol. 7 (Taipei, 1978), 309–54.

⁶³ TNA FO 228/125: Sullivan to Bonham, 4 January 1851. His brother, Chen Qingxi, was thought by British officials to be the real leader.

⁶⁴ TNA FO 17/175: Bonham to Palmerston, 23 May 1851.

further.’⁶⁵ This was only one year after Palmerston’s famous intervention in the Don Pacifico case in Greece.⁶⁶

The story of Chen Qingzhen had a long afterlife in Foreign Office lore, being referred to time and again when officials considered the question of Chinese British subjects, and it served to illustrate the difficulty of the issue. There is a detail of the story which was sometimes emphasised in its retelling and which may explain part of its continued resonance. Minister Alcock described the case in 1869, saying that Chen was ‘bamboozed to death in the same Yamen where the consul was kept in parley for several hours by the Chief Magistrate until the end was effected. The mangled body was then sent after the consul in derision of his demand for the man.’⁶⁷ The case of Chen Qingzhen was not just a story of Chinese cruelty, it was also an example of Chinese humiliation of a British consul, and it could be used by those who argued against protecting Chinese British subjects to show the potential danger to British prestige, and the futility of intervention, in cases involving them.⁶⁸ It is difficult to judge whether Chen was in fact a member of the rebel Small Sword Society, but it is possible to conclude from his case, and that of other Chinese British subjects which Chinese authorities were determined to punish, that from a Chinese official perspective, the presence of Chinese British subjects who were connected and even embedded in multiple ways with local Chinese people was both disturbing and potentially highly disruptive.

The regulations of the 1860s

From the mid-1860s, there was increased official activity with regard to Chinese British subjects, involving a wider range of British state actors: important roles in

⁶⁵ TNA FO 663/8: Bonham to Sullivan, 30 September 1851.

⁶⁶ In 1850, Palmerston ordered military intervention in Greece in aid of Don Pacifico, a Portuguese Jew born in Gibraltar whose property had been damaged in a riot. Palmerston famously proclaimed in the House of Commons that ‘a British subject, in whatever land he may be, shall feel confident that the watchful eye and the strong arm of England, will protect him against injustice and wrong.’ Quoted in Edward Rhodes, *Presence, Prevention, and Persuasion: A Historical Analysis of Military Force and Political Influence* (Oxford, 2004), p. 33.

⁶⁷ TNA FO 17/1258: Alcock to FO, 6 May 1869. The case was also retold in a dramatic style and published in a popular London magazine: ‘The fate of Tan-King-Chin, a British subject’, *Once A Week*, vol. 4, 19 January 1861, pp. 95-7.

⁶⁸ The story surfaced again in this role in a Foreign Office minute in 1894. TNA FO 17/1259: minute of F. Bertie, 7 February 1894.

creating policy were played by the Foreign Office, the law officers of the crown and the chief judge in Shanghai as well as the superintendent of trade (by now the minister in Beijing) and the colonial governments of Hong Kong and the Straits Settlements. Alcock while superintendent and minister found himself at the centre of a good deal of activity on the question of Chinese British subjects from 1865 which would culminate in the best known rule on Chinese British subjects, his 'costume' or 'dress' regulations of 1868.⁶⁹ At around the same time, the chief judge of the newly-established SCC, Edmund Hornby, produced a rule on protection of Chinese British subjects.⁷⁰ The rules issued by each of these officials would affect the treatment of Chinese British subjects until 1904, when both were repealed. They are considered here in some detail, to show the divergent responses of British officials to problems of governance, which were based on a variety of factors: attitudes towards Chinese officials and people; the personal history of individual British officials; and the divergent priorities of British officials in different roles and locations.

Two separate matters had arisen almost simultaneously to bring the issue of Chinese British subjects to the fore. In December 1865 Foreign Secretary Lord Clarendon instructed Alcock to inform the Chinese authorities of the British position that Chinese resident in Hong Kong at the time of its cession to Britain were British subjects, since it was not known whether the Chinese accepted this claim.⁷¹ The motive behind this was the wish to ensure that the Chinese would cooperate in the extradition of alleged criminals who had absconded to China from Hong Kong. Clarendon's instructions to Alcock also contained the Foreign Office view on the status of children born in Hong Kong to Chinese who had moved there after its cession to Britain: the usual rule of international law with regard to dual nationality was to be followed, so they would not be protected in China. The question of the status of subsequent generations born in Hong Kong or of Chinese born in the Straits or other British territories was not discussed. The second matter arose as a result of consular practice in China. In October 1865, Wade

⁶⁹ Alcock circular No. 10, 7 October 1868 with notification of 6 October 1868, reprinted in BPP, HC, *Report of the Royal Commissioners for inquiring into the laws of naturalization and allegiance*, p. 64.

⁷⁰ Hornby, *Instructions*, p.3.

⁷¹ TNA FO 228/381: Clarendon to Alcock, 18 October 1865.

(acting head of the Legation before Alcock's arrival) had written to the Foreign Office reporting a despatch from Daniel Brookes Robertson, consul at Guangzhou, about Chinese British subjects.⁷² This despatch presumably crossed with Clarendon's to Alcock of December.

Wade reported two issues raised in Robertson's despatch: the certificates issued by the Straits Government to Chinese British subjects travelling to China (in particular the Chinese wording in the certificates, which referred to the British Consulate using a slang term translated literally as the 'red bristle consulate'; and Robertson's attitude to Chinese British subjects seeking to register themselves at the Guangzhou consulate. Robertson described Chinese British subjects as a 'mischievous class' and reported that he refused to register them as British subjects, since he had 'detected them in handing these certificates to one another, and in one instance that of a man who had been dead for some time was in the possession and use of another.'⁷³ He told applicants that he would only consider registering Chinese as British subjects if they would wear European clothes. It is not clear whether Robertson was aware of the early attempts by Davis to persuade Chinese British subjects to dress as Europeans, or whether local Chinese officials had protested, as they did at Xiamen in 1866, that if Chinese British subjects wished to be treated as British they should not dress as Chinese;⁷⁴ but he did not justify his practice on those grounds, rather he stated:

You may say there is no law to compel a British subject to wear a foreign dress, and you are right – there is none – but there is a custom, and when a British subject assumes the Chinese dress, and looks and acts as a Chinaman, he must be content to be treated as such, for he will get no protection at my hands.⁷⁵

Robertson's attitude towards Chinese British subjects was fairly representative of the voices of many consuls, particularly after the end of the initial push to establish

⁷² TNA FO 17/1258: Wade to Russell, 18 October 1865.

⁷³ TNA FO 17/1258: Robertson to Wade, 15 September 1865.

⁷⁴ TNA FO 17/1258: Swinhoe to Alcock, 21 December 1866, enclosed in Alcock to Stanley, 7 February 1867.

⁷⁵ TNA FO 17/1258: Robertson to Wade, 15 September 1865. Wearing Chinese clothes later became a controversial missionary strategy (see 'Chinese Etiquette', *NCH*, 18 March 1892, p. 335 for contemporary, and highly negative, comment on this practice). Chinese dress had earlier been adopted by plant hunter Robert Fortune on his journeys in the interior, see Bickers, *The Scramble for China*, p. 100. Robertson may have chosen his words carefully ('and looks and acts as a Chinaman') so as not to include such persons within those he would deny protection to.

British presence and authority by them in the 1840s. Robert Swinhoe at Xiamen deterred Chinese British applicants for passports for travel into the interior by requiring security to guarantee good behaviour from 'these so-called British subjects' and tried quoting international law to Chief Judge Hornby in 1866 in the hope that he would agree that Chinese British subjects who domiciled themselves in China lost their British nationality, complaining that 'a great deal of vexation is thus caused to the consul, and much of his time, which might be given far more profitably to genuine British cases, uselessly expended.' He also suggested that Chinese officials assumed that consuls had been bribed to take up the cases of Chinese British subjects, which 'tends to weaken his influence and prestige.'⁷⁶ Consul Arthur Davenport at Shanghai also argued against protecting Chinese British subjects in 1878:

The privileges of quasi-extraterritoriality provided by the Treaties for British subjects require the exercise of a very considerable amount of good feeling, tact, and self restraint, qualities for the most part to be found with the generality of the members of British communities in China, but which cannot possibly be looked for from the descendants of Chinese emigrants.⁷⁷

Any perusal of the court cases reported in issues of the *NCH* in the 1860s and 70s, which contain numerous accounts of the frequent drunkenness, violence and commercial chicanery engaged in by mostly non-Chinese British subjects, shows that Davenport's assertion as to the inferior qualities of Chinese British subjects was not a fair one.

Many consuls complained of the trouble caused to them by Chinese British subjects and questioned their right to protection, but there are also nevertheless numerous examples of consular intervention on their behalf. A notable example occurred in 1866 at Xiamen, when Consul William Pedder, fearing a repeat of the Chen Qingzhen case, rushed with a naval escort to Haicheng near Xiamen and secured the release of a Chinese British subject being held there.⁷⁸ Practice varied

⁷⁶ TNA FO 228/405: Swinhoe to Hornby, 15 June 1866.

⁷⁷ TNA FO 17/1258: Davenport to Fraser No. 24, 18 April 1878.

⁷⁸ TNA FO 228/405: Pedder to Alcock, 10 February 1866. Fifteen years earlier Pedder had been on the Coroner's jury responsible for the inquest into Chen's death, which may explain his attitude. Pedder's replacement Swinhoe on taking over at Xiamen raised doubts as to the correctness of Pedder's intervention, since the man was actually a naturalised British subject and therefore not eligible for British protection in China. TNA FO 228/405: Swinhoe to Alcock, 15 May 1866.

considerably, as the above examples show, ranging from Robertson's refusal to accept Chinese British subjects for registration (a stance he maintained into the 1870s) to dramatic interventions such as Pedder's in 1866.⁷⁹ What is clear is that consular practice was not based on rigid adherence to law or regulations. From the 1860s right through to the 1920s it was highly variable, as consuls' past experiences and views of Britishness, or degree of feelings of moral duty or sympathy towards Chinese British subjects, often influenced their approach towards them, which could also be affected by ignorance or inadequate understanding of the rules consuls were supposed to apply.

The attitude of Thomas Wade as chargé and then minister was far more sympathetic than most British consuls or diplomats towards Chinese British subjects. In Wade's opinion, there were among them men 'of great merit and promise, and from whose contact with our own civilization China has much to hope.'⁸⁰ This kind of comment, seeing Chinese British subjects as a civilizing force, was unusual, and may in part have resulted from personal connections with Straits Chinese such as Gu Hongming, at one time his secretary. Indeed, Consul Robertson had ended his despatch regarding refusing to register Chinese British subjects at Guangzhou with the more typically cynical comment that 'these Singapore and Penang quasi-British subjects rather contravene the doctrine that the moral standard is raised by education.'⁸¹ Wade would continue to be assertive of the rights of Chinese British subjects when he became minister. He argued forcefully against Chinese Minister Shen Guifen in 1872 who claimed that any descendants of Chinese parents, of whatever generation, were Chinese subjects.⁸² When reporting a dispute which had initially arisen at Fuzhou over taxes involving Gu Hongde (brother of Gu Hongming) and another Chinese British subject in business there, Wade also made the unusual, but no doubt truthful, comment to the Foreign Office that Chinese British subjects had not 'in general been as troublesome as Anglo-Saxon British subjects.'⁸³ In that case, Wade went so far as to ask for men of war to

⁷⁹ TNA FO 228/587: Robertson to Fraser, 8 October 1877.

⁸⁰ TNA FO 17/1258: Wade to Russell, 18 October 1865.

⁸¹ TNA FO 17/1258: Robertson to Wade, 15 September 1865.

⁸² TNA FO 17/1258: Wade to Foreign Office, 30 January 1872.

⁸³ TNA FO 17/1258: Wade to FO, 30 January 1872.

be sent to Fuzhou and Xiamen and threatened hostilities. Prince Gong was reported to be 'seriously disconcerted', and the Foreign Office in London were displeased.⁸⁴ Wade's particularly aggressive stance in 1872 reflected the change in relations since the Tianjin massacre, which as Wade pointed out to Gong, meant that he felt he could not 'mince matters'.⁸⁵ But even taking this into account, Wade was unusual among senior British officials in being consistently assertive of the rights of Chinese British subjects. This was not in line with the view from the Foreign Office, who referred the question of the status of Chinese British subjects to the law officers, wondering whether Britain had any right to deny the Chinese government's claims, but the law officers' opinion on this occasion (their opinions were not consistent over the years) stated that Chinese British subjects owed no allegiance to the Chinese government.⁸⁶

Minister Rutherford Alcock, however, tended to take the view that Chinese British subjects were troublesome both for the Chinese and the British authorities. He spelled out his difference of opinion with Wade over the civilizing potential of Chinese British subjects:

I have heard it contended that by means of naturalized Chinese who have lived in our colonies and become familiar with our language and superiority, ideas might gradually penetrate to our advantage where no foreigner ever finds his way, and thus in time the whole mass might be leavened and prepared to receive us with less distrust and hostility. So far as my own experience extends I confess that I am led to adopt an opposite conclusion.⁸⁷

In 1867, Alcock went as far as to recommend to the FO a scheme originally suggested by Governor MacDonnell of Hong Kong, that no Chinese should be entitled to the rights of British subjects outside British territory.⁸⁸ MacDonnell had intervened on receiving Alcock's notification prompted by Clarendon's instructions

⁸⁴ TNA FO 17/1258: minute of P.C., 27 April 1872 re Wade to Foreign Office, 30 January 1872.

⁸⁵ TNA FO 17/1258: Wade to FO, 30 January 1872.

⁸⁶ TNA FO 17/1258: Law officers to FO, 29 May 1872. The law officers, when asked again in 1879 about the issue of Chinese British subjects, gave the contrary opinion that 'Her Majesty's Government ought not to insist upon extending British protection to persons of Chinese descent whilst they are within Chinese territory.' This opinion was not forwarded by the FO, as they were waiting for a despatch from Wade which never materialised. Quoted in TNA FO 405/256: memorandum of J. T. Pratt, 'The Protection of Anglo-Chinese in China,' 4 February 1928, confidential print, p. 195.

⁸⁷ TNA FO 17/1258: Alcock to FO, 15 February 1867.

⁸⁸ MacDonnell's harsh treatment of Chinese in Hong Kong is described in Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880*, p. 330.

that Chinese resident in Hong Kong at the time of its cession were regarded as British subjects in China. If it were not deemed acceptable to deny them protection as MacDonnell suggested, Alcock proposed requiring them to wear European clothing: 'if British protection is to be extended to them, I would gladly see it limited to those who outwardly and not secretly claimed to be of our nationality.'⁸⁹ The FO once more referred matters to the law officers.

The law officers' opinion on this occasion was that it was acceptable to require Chinese British subjects to distinguish themselves from Chinese subjects through their costume and Alcock was asked to prepare a draft.⁹⁰ After a number of versions had passed back and forth, the notification known as the 'costume regulations' was issued in 1868, requiring Chinese British subjects to 'discard the Chinese costume and adopt some other dress or costume whereby they may readily be distinguished from the native population.' Chinese British subjects were also required to 'pay all due respect according to the custom and usage of the country' when suing in a Chinese court or appearing in public before Chinese authorities.⁹¹ Although the option of requiring a change of hairstyle was discussed (it was recognised that the queue was a symbol of allegiance to the Qing dynasty), it was decided that since the absence of a queue was regarded by the Chinese as the mark of a criminal, and the growth of the hair to the front (which was normally shaved) was associated with rebels, such a requirement would endanger Chinese British subjects and was therefore unreasonable.⁹²

The political significance of dress and appearance in China has been analysed by historians in a number of ways. The rules on male hairstyles and official dress imposed by the Manchu Qing dynasty have been seen as an attempt to 'Manchufy' the empire's Han Chinese subjects, which was at first resisted. Not obeying Qing dress codes could lead to execution, so style of dress was a serious matter.⁹³ The

⁸⁹ TNA FO 17/1258: Alcock to FO, 15 February 1867.

⁹⁰ TNA FO 17/1258: Law Officers to FO, 29 May 1867.

⁹¹ Alcock circular No. 10, 7 October 1868 with notification of 6 October 1868, reprinted in BPP, HC, *Report of the Royal Commissioners for Inquiring into the Laws of Naturalization and Allegiance*, p.64.

⁹² TNA FO 17/1258: Alcock to Foreign Office, 31 March 1868.

⁹³ Edward J.M. Rhoads, *Manchus and Han: Ethnic Relations and Political Power in Late Qing and Early Republican China, 1861-1928* (Seattle, 2011), pp. 59-61.

importance of hairstyle and dress in China has also been taken up by scholars of the republican era. Henrietta Harrison has shown how the adoption of new styles of hair and dress were acts with important, multiple meanings. Queue-cutting, for example, could be seen as a demonstration of opposition to the Qing dynasty, a badge of modernity and allegiance to the new republic, or as aping foreign ways.⁹⁴ Pär Cassel has pointed out the importance of style of dress to Chinese officials, who argued that missionaries wearing Chinese clothing should submit to Chinese jurisdiction in the places where they took up residence.⁹⁵

Alcock's costume regulations stood out at the time they were issued, and do so today, as rather peculiar measures for the British authorities to take in dealing with Chinese British subjects. Alcock knew this and anticipated the backlash against the regulations which occurred following their promulgation.⁹⁶ For some, it was inconsistent with the cherished ideals of Britain's liberal government to require of its citizens particular clothing in return for recognition. It was also considered grotesque to encourage 'Chinamen' to become that most distasteful or even dangerous thing – the cultural hybrid.⁹⁷ The regulations also appear strange when compared with British practice elsewhere: we are more familiar with contemporary colonial situations such as India where efforts were made to have Europeans and locals keep to their own traditional dress, which as Bernard Cohn states, 'symbolized their separateness'.⁹⁸ Clare Anderson has described the revulsion and disgust expressed by British in India when Indians altered their traditional clothing styles and adopted hybrid styles influenced by European

⁹⁴ Henrietta Harrison, *The Making of the Republican Citizen: Political Ceremonies and Symbols in China 1911-1929* (Oxford, 2000), pp. 30-8.

⁹⁵ Pär Kristoffer Cassel, 'Extraterritoriality in China: What We Know and What We Don't Know', in Robert Bickers and Isabella Jackson (eds.), *Treaty Ports in Modern China: Law, Land and Power* (Abingdon: Routledge, 2016), 23-42, p. 30.

⁹⁶ TNA FO 17/1258: Alcock to Foreign Office, 20 February 1869.

⁹⁷ Editorial, *NCH*, 27 October 1868, p. 512; 'British subjects of Chinese descent', *NCH*, 12 December 1868, p. 611. Extensive sumptuary laws had of course existed in Europe in the past, but by this time they had long since been repealed in Great Britain and such laws would have seemed archaic. See Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (London, 1996).

⁹⁸ Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton, N.J., 1996), p. 111. See also E.M. Collingham, *Imperial Bodies: The Physical Experience of the Raj, c. 1800-1947* (Hoboken, N.J., 2001), especially pp. 57-80.

clothing.⁹⁹ The move was not in tune with contemporary colonial practice, and the Straits governor complained about the 'inconvenience and injury it is likely to cause to a number of our population, of a class who deserve better treatment at our hands,' and even feared 'unpleasant, if not injurious, results throughout the Settlements.'¹⁰⁰ The question of Chinese British subjects was therefore a focus of contention in which attitudes towards China as a nation, Chinese people and their inherent character, and identity and the management of difference all came into play and can be seen to have varied across different locations in which British officials were engaged in governance over Chinese British subjects.

The government of the Straits Settlements generally displayed considerable concern for the rights of its Chinese British subjects who went to China. Straits Chinese were apparently readily granted certificates for travel to China, intended to provide for their protection as British subjects, from the 1840s, a practice which continued with the transfer of authority over the colony from the East India Company to the Colonial Office.¹⁰¹ The government of the Straits Settlements intervened in the cases of a number of Chinese British subjects from the 1860s, and its approach was generally supportive of their rights, often in cases where protection had been refused by consuls or the Legation. While interventions were sometimes undertaken in direct response to pressure put on the Straits government by Chinese based there, there is also evidence that the colonial government's approach towards Chinese British subjects was influenced by

⁹⁹ Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Oxford, 2004), p. 127.

¹⁰⁰ TNA FO 17/1258: Ord to Colonial Office, 23 December 1868, enclosed in Colonial Office to Foreign Office, 3 February 1869.

¹⁰¹ An official notification was published in 1844 which declared that 'Authentic intelligence having been received that a naturalized British Subject, but of Chinese origin had incurred some risk of Seizure [sic] and persecution by the Chinese Authorities in consequence of his appearing at one of the Ports in China...it is hereby notified with a view to protect persones [sic] so situated that the Resident Councillors at Pinang, Singapore and [sic] will be prepared to furnish a certificate when required intimating that they are naturalized British Subjects.' Quoted in 'The British Subject of Chinese Origin', *The Singapore Free Press and Mercantile Advertiser*, 2 January 1845, p. 2. The reference to 'naturalized' British subjects is probably erroneous – the notification was prompted by the case of a natural born Chinese British subject who was detained at Ningbo. Consuls and other officials frequently referred to Chinese British subjects as 'naturalized' when they were not, perhaps indicating a need felt to highlight the difference between them and British subjects of European origin, a difference which did not exist in legal terms except to the extent that the Chinese were dual nationals.

impulses of the 'civilizing mission,' in turn informed by assessments concerning the nature of Chinese people. In 1883 Governor Weld wrote in this vein to the Colonial Office shortly after two Penang-born Chinese British subjects were refused registration at Shanghai:

I believe that whilst we should lessen our responsibilities by relieving ourselves of the care in China of men who are really Chinese in heart and in habit and conduct, we should raise the status of real Anglo-Chinese subjects, and gradually wean them from their foreign Chinese tendencies and habits.¹⁰²

Here was an argument, based on an understanding of the character of the Chinese Straits population, that they were both capable and worthy of being moulded into acceptable imperial citizens, and that those Straits Chinese who had demonstrated their suitability deserved access to the rights and privileges of British subjects.

In Hong Kong, with its much more recently-settled Chinese population (aside from the relatively few original inhabitants), the reaction to the rules governing Chinese British subjects in China was different. The government there did not look on its Chinese inhabitants as British subjects – Hong Kong did not at the time naturalise any ethnic Chinese, and even deported troublemakers to China, some of whom were presumably British subjects.¹⁰³ In 1867 Hong Kong Governor MacDonnell expressed concern that disreputable characters would take advantage of British protection but respectable Chinese would misinterpret British edicts on the status of Chinese British subjects as meaning that by settling in Hong Kong they would be forced to give up Chinese nationality. This he feared would deter them from moving to Hong Kong, and he argued that 'any Chinese resident here would at present hear with amazement that either himself or his children were no longer regarded as owing allegiance to the Emperor of China but to Her Majesty.'¹⁰⁴

¹⁰² TNA FO 17/1259: Weld to Colonial Office, 11 April 1883, enclosed in Colonial Office to FO, 4 June 1883.

¹⁰³ Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880*, p. 56.

¹⁰⁴ TNA FO 17/1258: MacDonnell to Colonial Office, 4 January 1867, enclosed in Colonial Office to FO, 23 March 1867.

Contrary to Alcock's expectation, there were some supportive voices towards the costume regulations in the British China press.¹⁰⁵ Less surprisingly, the China consuls were also generally in favour. That this was so does not imply that consuls were relaxed about the blurring of boundaries and willing to admit Chinese British subjects who discarded Chinese dress into Britain's China world as equals. After all, consuls would still be able to differentiate between Chinese British subjects and 'white' Britons on the basis of physical appearance and features of culture and lifestyle other than mode of dress. Consuls may have been in favour because it was probably widely known that, as Robertson had found, prohibiting Chinese dress was an effective way of reducing the numbers who sought to register themselves as British subjects. This possibility was suggested by the wording of the regulation itself, which stated that Chinese British subjects were not required to follow the regulations, but if they failed to do so they would be subject to Chinese jurisdiction. The reasons why consuls might wish to discourage registration of Chinese British subjects did not stem solely from beliefs which they may have held about Britishness, imperial citizenship, or the proper rights of colonial subjects. For those consuls based at ports with a significant population of Chinese British subjects (especially Xiamen, Shantou, and later Guangzhou), disputes involving Chinese British subjects could take up a considerable amount of consular time. This was not just down to the volume of disputes; cases involving Chinese British subjects and their Chinese associates were often very difficult for consuls to understand and apply English law to. The volume of correspondence with the Chinese authorities generated by such cases was certainly high at Xiamen in the early twentieth century, where, according to a report prepared by Consul Ambrose Sundius in 1909, Chinese British subjects triggered an even greater exchange of communications with the Chinese authorities from 1906-8 than missionaries, who were notorious for creating problems for consuls.¹⁰⁶

¹⁰⁵ TNA FO 17/1258: 'The Dress Notification', *The China Mail*, 19 December 1868, enclosed in Alcock to Foreign Office, 20 February 1869.

¹⁰⁶ Figures from Sundius' report show that from 1906-8, matters involving Chinese British subjects generated 368 items of correspondence with the Chinese authorities, whereas those involving missionaries resulted in 214. Over those years the average number of Chinese British subjects registered at Xiamen was 47. The average number of missionaries was 34. Figures are from TNA FO 228/2157, Sundius to Jordan, 7 January 1909, quoted in Murakami Ei, 'The Question of Chinese with British Nationality in Late-Qing Xiamen', p. 155. For more on tensions between British officials and missionaries, see Bickers, *The Scramble for China*, pp. 240-3.

Alcock's position on Chinese British subjects at this time should be seen in the context of his efforts on a number of fronts to further the 'cooperative policy' initiated under Minister Bruce following the settlement of the Second Opium War, as part of which the British sought to build relationships with Chinese political and commercial elites; the removal of sources of friction was a natural element of that approach. Measures such as the costume regulations were, it seems, intended to assist in that goal—Alcock argued when forwarding his draft to the Foreign Office that they would 'get rid of a serious practical inconvenience fraught with mischief, and specially prejudicial to a good understanding between the authorities of the two nations.'¹⁰⁷ As already described in chapter two, steps were also taken at the same time to control other problem elements of the British presence, such as the 'rowdy class' of British subjects who survived by robbing and plundering Chinese boats and villages.¹⁰⁸ Alcock's views on Chinese British subjects were also probably influenced by his personal experiences as a consul, particularly at Xiamen, where the consul's workload was most heavily burdened by matters involving Chinese British subjects, but unlike some officials, Alcock emphasised practical justifications, in particular the aim of improved relations with the Chinese government, and tended not to stray into discourses on Britishness in general. That the costume regulations were primarily a pragmatic attempt on the part of Alcock to reduce friction between British and Chinese officials, rather than an attempt at social engineering, is also suggested by the rather contradictory nature of the regulations: at the same time as pushing Chinese British subjects away from Chinese habits in the realm of dress, the second part of the regulations, which required Chinese British subjects to follow Chinese customs and manners when appearing before Chinese officials, was clearly pulling them in the opposite direction by requiring them not to adopt European ways which they may have picked up in Hong Kong and the Straits Settlements.

¹⁰⁷ TNA FO 17/1258: Alcock to FO, 7 September 1867.

¹⁰⁸ TNA FO 17/1258: Hornby to Alcock, 17 December 1866, enclosed in Alcock to FO, 17 January 1867.

Sir Edmund Hornby, the British judge based at Shanghai, although having a very important impact on the practice of consuls from 1867 onwards, was not generally included in the frequent policy discussions between the Legation, Foreign Office and colonial governments over Chinese British subjects. He was not involved at all in discussions on the costume regulations. In 1867 Hornby issued instructions to consuls which contained the single most consistently applied rule on Chinese British subjects in the nineteenth century—that those born to parents who were themselves British subjects were to be protected, but those born to parents who were not British subjects were ineligible—but it appears that he did not clear them with the minister or Foreign Office in advance. The instructions, which dealt with all aspects of consular judicial duties and amounted to over one hundred pages when published in Shanghai, were sent on after they had been issued, and were eventually approved by the law officers.¹⁰⁹ It is striking however that at around the same time that detailed despatches were passing between the Foreign Office, the minister and the colonial governments regarding protection and control of Chinese British subjects, Hornby's rule was issued buried among the detail of a handbook on consular jurisdiction, apparently without any consultation with his superiors in Beijing or London.¹¹⁰ Alcock was not aware of Hornby's instructions when they were referred to in a despatch in 1869 by Straits Governor Ord, protesting about the costume regulations.¹¹¹

Given the lack of discussion around Hornby's contribution, it is difficult to discover much about his precise attitude and his reasons for expressing the rule as he did. Hornby had previously served as judge of the British court in the Levant, also exercising extraterritorial jurisdiction, and portions of the instructions he issued in China were adapted from those he had issued to consuls there.¹¹² More generally, as already discussed in chapter two, Hornby did not take a conciliatory position towards the Chinese authorities, and thus was prepared to place himself at odds with Alcock over the latter's initiatives to remove sources of conflict and move

¹⁰⁹ Hornby, *Instructions*.

¹¹⁰ TNA FO 17/1258: Law Officers to Foreign Office, 27 May 1867. Hornby's instructions were issued on 1 January 1867.

¹¹¹ TNA FO 17/1258: Alcock to Foreign Office No. 54, 20 February 1869.

¹¹² Hornby, *Instructions*, p. 3.

towards more equal treatment of China as a sovereign nation. It seems unlikely therefore that Hornby gave much consideration to international law or diplomatic relations when he created his rule on Chinese British subjects in his instructions of 1867. Hornby simply stated that this was a pragmatic decision, perhaps influenced by the findings of his recent fact-finding tour of the consular courts under his supervision.¹¹³

This rule has been wisely laid down by H.M.'s Government to prevent in China the abuse of the rules of English law on the subject of birth conferring citizenship, which would in all probability occur if Chinese subjects could obtain for their children the status of British-born subjects simply by providing for their birth taking place on the soil of a British possession.¹¹⁴

The reference to the government having 'wisely laid down' the rule suggests that Hornby did base it on a Foreign Office source, presumably Clarendon's 1865 despatch to Alcock which was summarised in a circular to consuls of November 1866.¹¹⁵ This would explain why children born in British colonies to parents who were Chinese subjects and not also British subjects were not to be protected. However, Hornby seems to have assumed that the children of ethnic Chinese parents who were themselves born or naturalised in British colonies would be protected. This question had not been discussed in Clarendon's despatch to Alcock, but Hornby's decision was contrary to the international law approach on which Clarendon's instructions were based. As Hornby showed, not all British officials believed in the era of cooperation and the applicability of international law to China, so the British would still to some extent make their rules based on their own changing and diverse requirements or convictions.

The respective intentions of Hornby's instructions and the costume regulations were often misunderstood. According to Alcock, his regulations were intended as a means of controlling Chinese British subjects by forcing them to display openly their British nationality, thus preventing them from 'seeking to enjoy all the advantages of both [nationalities] and escape the obligations and responsibilities

¹¹³ Hornby, *Sir Edmund Hornby: An Autobiography*.

¹¹⁴ Hornby, *Instructions*, p. 3.

¹¹⁵ TNA FO 17/1258: Alcock circular No. 13 to consuls, 26 November 1866.

which the recognition of either would necessarily impose.’¹¹⁶ They were not intended to determine which Chinese British subjects were *prima facie* eligible for British protection in China—that was the purpose of Hornby’s instructions—but merely provided a means of disqualifying from protection eligible British subjects who did not obey them. However, because the costume regulations contained a clause to the effect that Chinese British subjects could choose whether they wished to benefit from British protection by electing to retain or discard Chinese clothing, the misapprehension soon developed in the FO (although not among the consuls in China) that these regulations were the only criteria which should be used to determine which Chinese British subjects were eligible for British protection in China.¹¹⁷

The policy change of 1904

Although the Foreign Office attempted to instigate negotiations with the Chinese government in the 1880s and 90s on the question of Chinese British subjects, the policies made in the 1860s remained broadly in place until 1904, when the position was completely overhauled by Minister Ernest Satow, without any reference to the Chinese government, with the effect that Hornby’s rule and the costume regulations were repealed and all Chinese born on British soil were eligible for British protection in China if they met certain conditions.¹¹⁸ The costume regulations had in fact rarely been enforced by consuls, who had generally followed Hornby’s instructions alone, although in many cases these were not followed either and Chinese British subjects were sometimes registered without any enquiry as to their parents’ nationality.¹¹⁹ A Foreign Office ruling in

¹¹⁶ TNA FO 17/1258: Alcock to FO, 31 March 1868.

¹¹⁷ TNA FO 405/256: memorandum of J. T. Pratt, ‘The Protection of Anglo-Chinese in China,’ 4 February 1928, confidential print, p. 193.

¹¹⁸ Consuls were instructed to register and protect all Chinese holding certificates proving they were resident in the new territories of Hong Kong at the time of their cession or born in British territory, including those born to non-British parents, provided the latter’s certificates from their colonial government showed they had resided for three continuous years in the colony of their birth prior to obtaining the certificate. Chinese British subjects who had registered and resided in Siam for three continuous years could also register: legation circulars to consuls of 22 August and 19 October 1904, see A. G. Major, *A Compendium of Instructions to H.M. Consular Officers in China Vol. 1* (Beijing, 1935), p. 132.

¹¹⁹ In 1885 Hornby’s instructions were reissued, largely unaltered as regards the status of Chinese British subjects: Sir Edmund Hornby and Sir Richard Rennie, *Instructions to Her Majesty’s Consular Officers in China and Japan, on the Mode of Conducting Judicial Business, with Comments on the China and Japan Order in Council, 1865, and the Rules of Procedure Framed under It* (Shanghai, 1885).

1894 which effectively recognised the Chinese position (and the view consistent with international law) that Chinese British subjects were considered to be under Chinese jurisdiction in China unless they had 'divested themselves of their Chinese nationality' would have been important and would have effected drastic change if it had been implemented widely, but it was not.¹²⁰

Satow's major policy shift in 1904 to broaden the scope of British protection of Chinese British subjects was prompted by an intervention from the governor of Hong Kong. The Hong Kong government's view of at least a part of its Chinese population had by that time radically altered from the view that was held in the first decades of the colony's existence. In a sense, it had 'caught up' with thinking in the Straits. The change is described by John Carroll:

whereas in the early years the colonial government had frequently referred to Chinese in Hong Kong as the 'scum of Canton,' by the turn of the century it saw the Chinese businessmen of the colony as allies in the struggle for order and stability, in Hong Kong, in South China, and in the British Empire.¹²¹

In 1903 the governor of Hong Kong, Henry Blake, complained about the case of Hong Kong Chinese businessman Chau Ngau Tsz, who had been robbed in Shantou where he had a branch of his business.¹²² Chau had been refused protection on the basis of Hornby's rule. Blake considered this unjust and sought a way for certain Chinese born in Hong Kong whose parents were not British subjects to receive British protection in China, at the discretion of consuls or the governor. He furthermore argued against the costume regulation, which meant that British nationality, 'unlike any other European nationality by naturalization, is a distinct disadvantage.'¹²³

Blake's assertion that no other European power with a population of ethnic Chinese subjects in China demanded that they wear European clothes in return for protection, reminds us that the competitive nature of relations between foreign

¹²⁰ TNA FO 228/2157: Appendix B to undated memorandum of P G Jones, FO to O'Connor, 21 February 1894.

¹²¹ John M. Carroll, 'Colonial Hong Kong as a Cultural-Historical Place,' *Modern Asian Studies*, 40, 02 (2006), 517-43, p. 532.

¹²² TNA FO 371/13203: appendix to memorandum of J. T. Pratt, 4 February 1928, p. 30.

¹²³ TNA FO 228/1446: Blake to Colonial Office, 16 April 1903 enclosed in Foreign Office to Satow, 3 July 1903.

powers at this time could influence their respective approaches towards their colonial subjects. Of all the foreign powers in China, the practice of Japan provides perhaps the most appropriate comparison with Britain – Japan had both significant interests and ambitions in China, as well as numerous ethnic Chinese colonial subjects, in a way which none of the other powers apart from Britain did. Japan also provides a stark contrast, since Japanese officials unlike British ones actively sought to increase the number of ethnic Chinese Japanese subjects.¹²⁴ Barbara Brooks has described the approach of the Japanese government towards its colonial subjects: ‘Japanese policy ... sought to use them and their numbers as important components of economic, cultural and social imperialism in China.’¹²⁵ The British officials who displayed attitudes closest to that of the Japanese position were located within the colonial governments of the Straits Settlements and Hong Kong, but it is clear that their enthusiasm for protecting Chinese British subjects was driven primarily by concerns about the governance of their respective colonies, not expansionist policy aims in China itself.

In a minute on Chau’s case by the Hong Kong Attorney General, an allusion was made to Palmerston’s famous 1850 speech on the inviolability of the British subject (sometimes known as the ‘civis Britannicus sum speech’), given in defence of his action in Greece on behalf of Don Pacifico: ‘Chau Ngau Tsz, the petitioner, was born in Hong Kong in 1867 and has always lived here; and he is in every sense entitled to say of himself “civis Britannicus sum”.’¹²⁶ This was an argument powerfully made, invoking the heroic imperial figure of Palmerston, in favour of Chinese British subjects enjoying their ‘birthright’ of British protection. This kind of language demonstrates very clearly the gap between the views of the colonial governments and those typically held by consuls in the treaty ports.

¹²⁴ When Taiwan became a Japanese colony in 1895, thousands of ethnic Chinese Japanese subjects were created. Many Fujian and Chaozhou Chinese resident on the mainland also gained Japanese protection; see Barbara Brooks, ‘Japanese Colonial Citizenship in Treaty Port China: The Location of Koreans and Taiwanese in the Imperial Order,’ in Robert A. Bickers and Christian Henriot (eds), *New Frontiers: Imperialism’s New Communities in East Asia, 1842-1953* (Manchester, 2000), 109–24, p. 110.

¹²⁵ Brooks, ‘Japanese Colonial Citizenship in Treaty Port China: The Location of Koreans and Taiwanese in the Imperial Order’, p. 111.

¹²⁶ TNA FO 228/1446: minute of Hong Kong Attorney General H. S. Berkeley, 13 March 1903, enclosed in Blake to Colonial Office, 16 April 1903.

As described above, the government of the Straits Settlements had held a positive view of sections of its Chinese population from a much earlier date. But towards the end of the nineteenth century additional factors would weigh in favour of an even more protective stance in relation to its Chinese British subjects. The government of the Straits Settlements was increasingly worried about what it saw as attempts by the Chinese government to assert its influence over Chinese in the colony. It was especially alarmed by the issuing of passports to Straits Chinese by the Chinese consulate in the Straits in the 1890s.¹²⁷ To some extent, the colonial government may have seen itself as being engaged in a contest with the Chinese government for the allegiance of the Straits Chinese population.

The other important element in the policy-change embodied in Satow's new rules was changing international relations. By 1903 after the defeat of the Boxers and amidst the scramble for concessions, neither fostering good relations with the Chinese government nor following international law was on the agenda. Governor Blake argued that 'the Chinese government has yielded to demands of other nations that are not sustainable by any academic interpretation of international law' and went on to warn that the lack of consular intervention in the case of Chau 'must have the effect of lowering our prestige which, in the East, is a valuable asset.'¹²⁸ Competition with other powers (both for prestige and material gains) had become more important and as the Foreign Office noted, the 'gradual enfeeblement of China and the encroachments of other Powers' meant that there was no need to negotiate with the Chinese government on the change of policy.¹²⁹ The initial attitude of the Foreign Office had been to follow the rules of international law in accordance with its ruling of 1894 (which was wrongly believed to have been fully implemented in China), but this stance was reversed following the proposals by Blake and Satow.¹³⁰

¹²⁷ E. Tang, 'The Status in China of Chinese British Subjects From the Straits Settlements: 1844-1900,' *Papers on Far Eastern History* (1971), 189-209, p. 199.

¹²⁸ TNA FO 228/1446: Blake to Colonial Office, 26 August 1903, enclosed in Colonial Office to Foreign Office, 5 October 1903.

¹²⁹ Quoted in TNA FO 405/256: memorandum of J. T. Pratt, 'The Protection of Anglo-Chinese in China,' 4 February 1928, confidential print, p. 199.

¹³⁰ TNA FO 228/1446: FO to Colonial Office, 4 July 1903, enclosed in FO to Satow, 3 July 1903.

The change of policy to offer protection to a greater number of Chinese British subjects soon led to a backlash of complaints from consuls at Guangzhou and Shantou. The new rules meant that consuls were asked to extend protection to Chinese who, since their parents need not have been British subjects, often had closer ties, both social and economic, to non-British Chinese individuals, businesses and communities. In 1905 Consul-General James Scott at Guangzhou refused to register Li Shunfan, a Chinese British subject born in Hong Kong, who wished to establish a bank in the centre of Guangzhou. The principal reason Scott gave for refusing to register Li appears to have been that he would have Chinese business associates and that he also owned property in the interior, the latter in contravention of the treaty provisions which prevented British subjects from doing so. It is interesting to note the other details of Li's case which Scott thought relevant when reporting his refusal to register Li as a British subject – Li was 'dressed like a Chinese and unable to speak English,' his place of business would 'have all the outward appearance of a Chinese bank' and he 'admitted that his banking business would be solely with Chinese.'¹³¹ Scott appeared to be wishing to exercise a discretion not provided for by the rules; following correspondence between Hong Kong and the Legation, he was instructed to register Li but warn him that protection would not extend to any dealings which were not permissible for British subjects.¹³²

Harry Fox, acting consul-general at Guangzhou, raised the question of revising the 1904 rules with Minister Sir John Jordan in 1908. Jordan sought the views of the consuls in the ports most affected. From Shantou he was told by Consul Pierre Hausser that 'I fail to see that our championship of these persons' interests in any way advances our influence or prestige in China. On the contrary it is on the whole I think distinctly prejudicial to the interests of our genuine nationals.'¹³³ From Fuzhou, Shanghai and Hankou on the other hand Jordan learned that the numbers registered were either insignificant, or in the case of Shanghai, that there were no problems, since 'the Chinese British subjects residing at this port are all of them,

¹³¹ TNA FO 228/2157: Scott to Hong Kong, 24 October 1905, enclosed in Hong Kong to Legation, 28 October 1905.

¹³² TNA FO 228/2157: minute by Jordan on Hong Kong to Legation, 28 October 1905.

¹³³ TNA FO 228/2157: Hausser to Jordan, 24 October 1908.

with one exception, respectable and law-abiding citizens.’¹³⁴ Jordan asked Chief Judge Frederick Bourne while on circuit in Guangzhou to look into the issue of Chinese British subjects. Bourne advised that Chinese British subjects who bought land or held themselves out to be Chinese subjects should lose their extraterritorial rights – consuls in such cases should merely see that the person in question was fairly dealt with under Chinese law.¹³⁵ Jordan minuted that it was not possible to ask the FO to alter Satow’s rule so soon after its implementation.¹³⁶ Consuls had a clear set of rules to follow but clearly sometimes found that these conflicted with their own notions of who should qualify for the privileges attached to British status. Scott attempted to restrict access to British rights by importing everyday conceptions of Britishness, based around language, dress and social contacts, into the legal question of who should qualify for British protection.¹³⁷ Consuls such as Hausser had a clear view as to who were ‘our genuine nationals’ – there was no need to spell out in his despatch who were and who were not.

The Satow rules remained in place but complaints and calls for reversal of the policy continued, especially from the consuls at Guangzhou and Xiamen. Doubts were also raised in 1910 by Hong Kong Governor Francis May, but subsequently, when the policy was again criticised in 1921 by Guangzhou Consul-General James Jamieson, both the Hong Kong and the Straits governments supported its retention, seeking to preserve protection for their colonial subjects.¹³⁸ The position adopted by the Foreign Office by this time was that a change in policy to reduce the scope of protection was desirable, but should be effected through negotiation with the Chinese authorities. Unsurprisingly, this proved difficult in

¹³⁴ TNA FO 228/2157: Warren to Jordan, 28 December 1908. The situation at Shanghai may reflect the fact that Chinese British subjects based there were less likely to have strong family or social ties to Chinese in the city or hinterland of Shanghai, since most Chinese migration to Hong Kong and the Straits was from Fujian and Guangzhou, far to the south of Shanghai. They were thus less likely to become entangled in the kind of disputes which dogged the consuls at Xiamen and Shantou.

¹³⁵ TNA FO 228/2157: Bourne (Supreme Court judge) to Jordan, 2 March 1909.

¹³⁶ TNA FO 228/2157: Minute by Jordan on Bourne (Supreme Court judge) to Jordan, 2 March 1909.

¹³⁷ Such factors were very important in the cases of Eurasians claiming British protection, as will be discussed in chapter 4.

¹³⁸ TNA FO 405/256: memorandum of J. T. Pratt, ‘The Protection of Anglo-Chinese in China,’ 4 February 1928, confidential print, pp. 200-203.

the turbulent years between the collapse of the Qing and the establishment of a comparatively stable government by the Guomindang in Nanjing in 1927.¹³⁹

The Satow policy remained officially in place, but in practice ways were found to retreat from protecting all Chinese British subjects, particularly from the 1920s onwards. To some extent, this occurred as a consequence of declining British power in China. At Guangzhou, Consul Jamieson reported that he registered Chinese British subjects but warned them that he lacked the power to protect them.¹⁴⁰ In 1923 the Legation issued a circular which deprived Chinese British subjects of the right to register their children as British subjects.¹⁴¹ This could be justified on a narrow reading of the Satow rules, which specified birth within British territory as a condition of registration of Chinese British subjects. This change in policy led to considerable hardship in some cases, for example that of Yeap Seng Koon, whose registration was not renewed on the ground that he was born in China (his father and grandfather were born in Penang), and who was subsequently prosecuted by the Chinese authorities for passing himself off as a British subject.¹⁴² At Shanghai existing registrations were continued and new registrations of younger siblings were allowed in order to soften the effect of this change.¹⁴³

A further significant change was the instruction, issued in 1925, that claims to protect Chinese British subjects should not be 'pressed beyond useful limits.'¹⁴⁴ This clearly allowed considerable flexibility and was used to justify the declining of recognition or protection in a number of cases. The position then adopted and advocated by Minister Ronald Macleay was that since British claims to protect Chinese British subjects under the Satow rules were 'based not so much on any legal or Treaty foundation but rather on grounds of expediency and political

¹³⁹ TNA FO 405/256: memorandum of J. T. Pratt, 'The Protection of Anglo-Chinese in China,' 4 February 1928, confidential print, p. 203.

¹⁴⁰ TNA FO 405/256: memorandum of J. T. Pratt, 'The Protection of Anglo-Chinese in China,' 4 February 1928, confidential print p. 203.

¹⁴¹ TNA FO 671/460: Peking circular No. 43, 28 July 1923.

¹⁴² TNA FO 371/13203: appendix to memorandum of J. T. Pratt, 4 February 1928, pp. 35-6.

¹⁴³ TNA FO 671/460: minutes by SB, 21 July 1924 and 26 July 1924.

¹⁴⁴ Peking circular to consuls, 24 March 1925, in A.G. Major, *A Compendium of Instructions to H.M. Consular Officers in China*, Vol. 1 (Beijing, 1935), p. 132.

considerations . . . exceptions can therefore properly be made when and where justified by the special circumstances of particular cases.’¹⁴⁵ The Foreign Office agreed that the Chinese British subject in the case in question, Chen Hanming, a journalist with political interests who had tried to renounce his British status in 1917 fearing conscription, could be refused recognition in China, as recommended by the Shanghai consul-general.¹⁴⁶ The same reasoning was used to deny registration to Stanley Chance, whose case was unusual in that he was born in London to a Chinese father and an English mother. He hoped to secure registration in order to protect the family hotel business (the Astor House Hotel, Zhifu) from fines and other charges made by local officials. In the course of a despatch requesting permission to refuse registration, Consul Smith highlighted the fact (it was mentioned twice) that Chance did not serve in the war, and furthermore noted that his father married an English wife ‘In England, where, gossip says, his fortune was acquired through running an opium den in Limehouse.’¹⁴⁷ As the number of exceptions on the basis of which registration and protection could be denied grew, more scope was available for discretion at the consulates and legation, and factors such as the appearance, background and life histories of those claiming protection appear to have become more important.

The British would turn more comprehensively to the question of Chinese British subjects in 1928, as part of their overall policy shift described by Minister Sir Miles Lampson as ‘modernising’ British relations with China.¹⁴⁸ The end result was that Chinese British subjects would be required to renounce their Chinese nationality in order to be eligible for British protection in China. It is clear, however, that British officials had by that time already for many years been attempting to reduce the scope of protection offered to Chinese British subjects in China.

¹⁴⁵ TNA FO 671/460: draft Circular to consuls No. 12 (1270/23), 16 February 1925

¹⁴⁶ TNA FO 671/460: Shanghai to Peking No. 17 (draft), 30 January 1925.

¹⁴⁷ TNA FO 671/460: Smith to Palaiet No. 27, 21 September 1925. According to the 1901 census, Stanley’s father William Chance had a shop in Limehouse (TNA RG 13/322: 1901 census return for Limehouse, p. 5). Chance’s case was treated as one involving a claim to be a Chinese British subject, rather than a Eurasian, presumably because of the stress laid on the nationality of the father at the time.

¹⁴⁸ TNA 371/13204: Lampson to Chamberlain, 4 October 1928. See Bickers, *Britain in China* for a description of this process.

Conclusion

Former consul J. T. Pratt, by 1928 a Foreign Office official writing a history of the issue of Chinese British subjects as background to discussions underway to reform British policy on the question of their treatment, asserted that British policy on Chinese British subjects in China was based on 'a long series of misunderstandings.'¹⁴⁹ This was true – misunderstanding and confusion were clear features of British governance demonstrated by the case of Chinese British subjects – but only up to a point. Pratt had an agenda, which was to show that the British government had never really intended to recognise Chinese British subjects as qualifying for British protection and extraterritorial rights in China, thereby discrediting the past practice of affording them protection and preparing the ground for his preferred policy of refusing to accept any new registrations of Chinese British subjects. This interpretation was too simplistic, because although there was considerable confusion caused by poor communication in the 1860s when Alcock and Hornby laid down their rules, each can be seen to have been acting based on different visions of Britain's place in China. Alcock sought cooperation and reduced conflict whereas Hornby did not allow the position of the Chinese government to affect his course of action, presumably because of the low opinion he held of that government, and possibly also based on a view of Britain's role and rights as a 'civilized' power more generally.

British policy and practices were inconsistent and changing, but they were not guided merely by pragmatic expediency in reaction to events, or simply based on misunderstandings; there were also clearly culturally-based motives behind British practice towards Chinese British subjects in China. Conflicting views of Britishness made the question of Chinese British subjects a subject of far greater internal debate than was justified by their numbers and the actual problems they caused. However much the rules which they were tasked with following changed, it is clear that for many British officials, particularly after the early years of the treaty century, Chinese British subjects, unlike 'white' Britons, were not enjoying their legitimate 'birthright' when taking advantage of their British status in China.

¹⁴⁹ TNA FO 405/256: memorandum of J. T. Pratt, 'The Protection of Anglo-Chinese in China,' 4 February 1928, confidential print, p. 205.

There was often a mismatch between the laws of British nationality and accepted folk theories of Britishness, the tension surrounding which was heightened by the advantages at stake due to the inequalities created by imperialism, and this led to a strong impulse in some to ignore regulatory or legal constraints, or to find ways around them. The sometimes dysfunctional and inconsistent nature of the British state apparatus in China is thus highlighted through this case study of the response to the problem population of Chinese British subjects.

The case of Chinese British subjects was especially complicated and contested because it involved multiple and different zones of imperial engagement – both China with its multiple and overlapping state sovereignties under extraterritoriality, and British colonies, such as Hong Kong and the Straits Settlements, under direct colonial control. Even within China, the British establishment was made up of more than one power centre – by establishing the SCC in Shanghai, the British had created a system where the judiciary and the executive (in this case, the minister in Beijing) were separate. A variety of arms of the British state were involved in dealing with Chinese British subjects, showing how empire in the British case was a multipolar formation, made up of parts which clashed as well as cooperated. Policies which were viewed as advantageous in the colonies – in which context Chinese British subjects were seen as increasingly valuable members of society – could be seen as harmful in the context of the treaty system and vice versa. Measures such as Alcock's costume regulations were most unwelcome to the British colonial government of the Straits Settlements, which would never have countenanced such a move within the colony itself, but the same measures were supported by British consuls in China. In different contexts, different readings of the character of Chinese British subjects took precedence. The mobility of colonial populations highlighted these differences and brought British officials into conflict with each other.

The issue of prestige, raised repeatedly in discussions of the place of Chinese British subjects, could similarly be viewed differently according to standpoint. The danger of loss of British prestige was used to argue for and against protecting Chinese British subjects – it was argued that guaranteeing British protection to

colonial subjects maintained prestige in Hong Kong and the Straits but it was equally argued by consuls that they lost prestige in China by intervening to protect Chinese British subjects. Chinese British subjects were on the one hand championed and had hopes pinned on them by the colonial governments, but were also criticised for ingratitude and duplicity, particularly by the consuls. Chinese British subjects in the Straits seemed to recognise that they were expected to demonstrate their gratitude and loyalty towards Britain, and so did Chinese British subjects in China, in their more precarious position, as they showed at Hankou in their farewell speech to the consul reported in the *North-China Herald*.¹⁵⁰ In this way they participated in the discursive contest over inclusive and exclusive conceptions of Britishness in ways which dovetailed with the efforts of their colonial governments to support them.

Despite Pratt's claims in his memo referred to above, there is no doubt that in 1904 Satow had a clear understanding of the facts and that he deliberately maintained, backed up by arguments from Hong Kong, that Britain could and should protect more Chinese British subjects given the circumstances in China. A consideration of the case of Chinese British subjects can therefore also add, in a small way, to our understanding of British expansion in China, and can show how the interests of British colonial governments influenced British policy in China. Asserting British jurisdiction over a larger number of people of Chinese ethnicity in China than could be justified under international law represented an increase in the degree to which Chinese sovereignty was infringed by the British state's actions in China, and this policy further undermined the authority of Chinese officials when they were thwarted in their attempts to place Chinese British subjects under Chinese state control. This was a step clearly taken deliberately by Britain's key official in China in 1904. It was, however, a far cry from the kind of expansion which Japan engaged in through its Chinese colonial subjects from 1895.

¹⁵⁰ L.H. Lees, 'Being British in Malaya, 1890-1940,' *Journal of British Studies*, 48 (2009), 76-101; see page 138 above for details of the speech, *NCH*, 27 December 1913, p. 973.

Chapter Four - Recognition and Protection II: British Eurasians

In 1917 a great deal of debate took place in the Shanghai British press about the place of certain groups in British armed forces, as the war in Europe brought questions of allegiance and identity to the fore among foreign communities in China. In the following extract from a letter to the *North-China Herald*, the writer took exception to the suggestion, made in an earlier editorial, that allowing Eurasians to join British units of the Shanghai Volunteer Corps would logically mean that 'Sikhs or Singalese' should also be admitted:

Had we Eurasians nothing else English in us but an acquaintance with the language, our standing as British subjects might be said to approximate that of the Sikh and Singalee. But we have your blood in our veins, most of us have been brought up to think and feel as you do, we dress and eat alike, and in other respects very many of us live and act as you Englishmen do. Are we then to be regarded merely as British subjects, or are we not justly entitled to a higher estimation by virtue of these reasons?¹

When British officials in China grappled with what was referred to as 'the Eurasian question', the same mixture of ingredients of identity – legal nationality, biological essence and cultural orientation – described in the letter above also came to the fore.²

This particular letter-writer could apparently feel perfectly secure in his being regarded ('merely') as a British subject, although many Eurasians in treaty port China could not, since no small number lacked a firm legal basis for their claim to British nationality, entitlement to which generally depended on a person's place of birth or parentage. But the letter-writer suggested that the legal conditions of nationality were not the only or even the crucial criteria for inclusion (or, in the words of the letter, entitlement to 'a higher estimation'). Furthermore, according to the letter-writer's viewpoint, the difference between Eurasian and Sikh or 'Singalee' British subjects did not end with the physical aspect in the form of 'blood'. Performance of Britishness through clothing, food and other aspects of behaviour was crucial too. This world view accords with Ann Laura Stoler's

¹ Letter by 'EURASIAN', *NCH*, 10 February 1917, p. 288.

² 'The Eurasian Question', *NCH*, 7 November 1883, p. 535.

contention, based on her work on French and Dutch colonial practices, that racism as an ideology is not based on observable physical characteristics, but is in fact founded on 'cultural attributions' which 'provide the observable conduits, the indexes of psychological propensities and moral susceptibilities seen to shape which individuals are suitable for inclusion in the national community and whether those of ambiguous racial membership are to be classified as subject or citizens within it.'³ This proposition will be kept in mind as I explore in this chapter the attitudes and practices of British officials, including consuls, judges, diplomats and FO personnel, towards Eurasians with British ties in treaty port China.

While the subject matter of this chapter might at first glance appear similar to that covered in chapter three on Chinese British subjects, it will become clear that in fact British officials in London and China treated the issues raised by the two groups in very different ways. In the case of Chinese British subjects, what was at stake was access to official recognition to the legal rights of British subjects in China – in short, to borrow our letter writer's terminology, it was a question of whether they were 'merely British'. Although colonial officials in Hong Kong and the Straits Settlements sometimes talked in high-minded ways of cultivating the Britishness of their Chinese colonial subjects, and were able to influence policy in China, there was rarely, at least among British officials in Beijing or at the treaty ports, any doubt that in essence Chinese British subjects were Chinese and would always remain so. When Chinese British subjects were ordered by Minister Rutherford Alcock in 1868 to wear European clothes if they wished to be registered and given British protection in China, they were not being asked to perform or embody their Britishness; they were rather simply being told to mark themselves out in order to be identifiable and thus not able quite so easily to pass as Chinese subjects when it suited them. In the case of Eurasians, this chapter will argue that very different possibilities were entertained and contested, and that when clothing or other signifiers of cultural allegiance were discussed in relation to them, it was connected to questions of their true or essential 'character' or identity.

³ Ann Laura Stoler, 'Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion in Colonial Southeast Asia', in Cooper and Stoler (eds.), *Tensions of Empire*, 198–237, p.203.

In describing official attitudes to Eurasians, this chapter will contribute to a fuller understanding of the relationship of agents of the British state to British settler culture and society in the treaty ports. Stoler, drawing on Benedict Anderson, has stated that 'colonial Europeans constructed "imagined communities" as deftly as the nationalist colonised populations to whom they were opposed', and historians have described, in the same analytical frame as colonies elsewhere, the cultures of some of the foreign communities which grew up in the colonial spaces of the Chinese treaty ports.⁴ Officials deployed by colonial states interacted with such 'imagined communities' in various ways, both as member-participants and as external agents implementing policies often generated in the metropole, where similar but certainly not identical conceptions of national-imperial identity held sway. While the 'politics of difference' was at the heart of imperial projects, it is clear that just as scholars of colonialism in other sites have found, and as the letter above seems also to confirm, the category of the coloniser was contested and its boundaries were hazy in treaty port China.⁵ A major part of the work of British consular officials in China involved an issue at the heart of questions of identities and boundaries – the decision as to who should be included under British jurisdiction and protection in China. Partha Chatterjee has argued that 'the most reliable definition of an imperial practice remains that of the privilege to declare the exception to the norm.'⁶ Informed by their views of Britishness, British officials made exceptions, ignored or overlooked rules, and laid down special policies in relation to Eurasians which had nothing to do with legality. When officials displayed attitudes and especially when they based their practices on these distinctions, they had an influence on treaty port society, and the 'imagined

⁴ Ann Laura Stoler, 'Rethinking Colonial Categories: European Communities and the Boundaries of Rule', in Nicholas Dirks (ed.), *Colonialism and Culture* (Michigan, 1992), p. 321., p. 321; for colonial culture in the Chinese treaty ports, see Bickers, *Britain in China*, Goodman and Goodman (eds.), *Twentieth Century Colonialism and China*, and Bickers and Henriot (eds.), *New Frontiers*.

⁵ There is a large literature on 'colonisers and colonised' and 'colonial difference'. In addition to the work of Ann Laura Stoler cited above, see Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference*, Nicholas Thomas, *Colonialism's Culture: Anthropology, Travel and Government* (Cambridge, 1994), Satoshi Mizutani, *The Meaning of White: Race, Class, and the 'Domiciled Community' in British India 1858-1930* (Oxford, 2011), Elizabeth Kolsky, *Colonial Justice in British India*.

⁶ Partha Chatterjee, *The Black Hole of Empire: History of a Global Practice of Power* (Princeton, N.J., 2012), p. 337.

communities' of which British officials formed an influential part. This was another way in which state agents engaged in processes already described in chapters one and two, whereby the British state's actions contributed to the making of the treaty ports into spaces where colonial relations were central to lived experience. I argue that in the case of Eurasians, this represented a subtle but important way in which the settler culture of Shanghai in particular was acknowledged by the British state, since it entailed the recognition of the power of Shanghai's society and institutions to enculturate illegitimate children to an extent sufficient to secure a degree of British state recognition of them.

Looking closely at official attitudes and practices will allow me to place under consideration the distinction between rhetoric and action which has been observed in connection with the issue of boundaries in other colonial contexts. Zine Magubane, writing on late nineteenth-century South Africa, has stated that 'Although the rhetoric of imperialism continually referenced the sanctity of imperial boundaries and was predicated on the rigid separation of races, classes, and genders, in actual fact, colonialism was, at its core, an exercise in boundary transgression.'⁷ Harald Fischer Tiné and Susanne Gehrman hold this assertion to apply more generally.⁸ Robert Bickers has shown that the rhetoric of clearly marked boundaries certainly applied within British colonial culture in China, for example in the popular literature it spawned, which often expressed the belief that Eurasians and the relationships through which they were brought into the world were doomed to tragedy.⁹ But this chapter will show how British state responses to the presence and actions of Eurasians were more complex than the rhetoric of impermeable boundaries would lead one to suppose. There was also a disconnect between the rhetoric of rule of law and strict adherence to rules and principles – which was a strong part of British self-perception – and British practice, which will be evident in this chapter and is also a theme elsewhere in the thesis.

⁷ Zine Magubane, 'The Boundaries of Blackness: African-American Culture and the Making of a Black Public Sphere in Colonial South Africa', in Harald Fischer-Tiné and Susanne Gehrman (eds.), *Empires and Boundaries: Rethinking Race, Class, and Gender in Colonial Settings* (Abingdon, Oxon, 2009), 212–32.

⁸ Harald Fischer-Tiné and Susanne Gehrman, 'Introduction: Empires, Boundaries, and the Production of Difference', in *Empires and Boundaries*, p. 17.

⁹ Bickers, *Britain in China*, especially pp. 48–9.

My argument is arranged as follows. I begin by describing the range of individuals who were classed as Eurasian by British officials in China, and the social and cultural context in which they lived in the treaty ports, with particular attention to some of the specific ways in which that context affected the lived experiences of Eurasian individuals. This is done largely by means of analysis of issues raised in the British treaty port press, which British officials in China would have read and which played an important role in treaty port society and culture. This part therefore provides some context for the official attitudes and practices considered later in the chapter. I then go on to discuss two areas in which much of the British official interaction with Eurasians took place. First, requests for recognition as a British subject or a British protected person, statuses which were sought by many Eurasians, and with regard to which British officials deployed specific policies and practices, especially in dealing with illegitimate Eurasians. Second, court proceedings in the British consular courts (including the SCC) and the Shanghai Mixed Court, a further important context in which British officials encountered Eurasians in China and were confronted in particular with the dilemma of inclusion and exclusion which their presence raised.

Eurasians in treaty port China

The term Eurasian is deployed in this chapter to describe individuals who had a parent who was European and a parent who was Chinese or Japanese, or who were the descendent of one or more persons who were Eurasian by that definition. They were referred to as Eurasians by British officials and also by members of treaty port society more generally, including Eurasians themselves. It is also a term used in the small but growing literature on the subject of such people and their families, a literature which has mostly focussed on the identities and lived experiences of Eurasians in Hong Kong, China and the United States in the nineteenth and twentieth centuries.¹⁰ For British officials, a Eurasian was most often a person who

¹⁰ See for example, Vicky Lee, *Being Eurasian: Memories Across Racial Divides* (Hong Kong, 2004); Emma Teng, *Eurasian: Mixed Identities in the United States, China, and Hong Kong, 1842-1943* (Berkeley, 2013).

had a European father and a Chinese or Japanese mother.¹¹ However, the situation is somewhat complicated by the contemporary tendency to refer to individuals who had Portuguese and Chinese ancestors and bore Portuguese names, of whom there were a considerable number in the treaty ports, as simply 'Portuguese'.¹² Some of the latter were British, or sometimes claimed British status, by virtue of having been born in Hong Kong. Such people were not generally referred to as Eurasian by British officials and might also self-identify as Portuguese. This was a complicated area, as shown by the example of G. Sequira, who was brought before the British Police Court in Shanghai in April 1909 on a charge of begging. The previous month he had been before the Portuguese consul-general, who had assumed jurisdiction and had cautioned Sequira, warning him that if he was charged again, he would not be recognised as a Portuguese subject. It was said in the hearing in the British court that Sequira claimed to have been born in Hong Kong, but in the absence of any proof thereof, the British judge Gilbert King refused to hear the case and Sequira was then taken to the Mixed Court by the SMP. In the Mixed Court, Sequira's case was heard by another British official, William Fletcher, sitting as assessor with the Chinese magistrate. He was deported to the British colony of Hong Kong.¹³

Those Eurasians in the treaty ports who could claim British nationality did so in two principal ways: if they were born in Hong Kong, or another British colony, or Britain itself, they were British subjects and generally needed only to prove their place of birth to satisfy officials of the validity of their claim; alternatively, if they were born in China and had a British father who was married to their mother when they were born, they were also generally able to claim British nationality as 'natural-born British subjects' in the same way as the children of two married British parents. There were many Eurasians with British fathers who were born in

¹¹ A definition of the term given in a contemporary reference source written by a former British consul was 'The offspring of a European father and an Asiatic mother.' Herbert Allen Giles, *A Glossary of Reference on Subjects Connected with the Far East* (Shanghai, 1900), p. 83.

¹² Bickers, *Britain in China*, p. 73.

¹³ *NCH*, 3 April 1909, pp. 42-43. The case also appears to show how Britain at this time acted in some ways as the default foreign authority in Shanghai, since when the Portuguese consul-general declined to recognise Sequira, a British official handled his case as Mixed Court assessor and he was deported to a British colony, also thus implicitly recognising his claim to belong to that place.

China to parents who were not married – they were ‘illegitimate’ according to the law and thus did not inherit the nationality of their father – and it was their status which provoked the most official discussion, as we shall see below. Children born in China of a Chinese father and a British mother were a small group, were considered under Chinese law to be Chinese nationals, and had no legal claim to British nationality under British law if not born in Britain or a British colony. They were not generally included within the category ‘Eurasian’ by British officials when issues surrounding Eurasians and policies to deal with them were discussed.¹⁴

It is very difficult to state with any confidence the number of British Eurasians in China at any given time. No official statistics appear to have ever been compiled by the British state of the number of Eurasian British subjects. The Shanghai Municipal Council collected data to establish the numbers of foreigners of various nationalities living in the Shanghai International Settlement in its census, and in some census years separate figures were also published showing the total number of Eurasians of all foreign nationalities in the settlement.¹⁵ Table 2 shows the SMC census data, together with inferred numbers of British Eurasians living in the settlement, based on the assumption that the proportion of Eurasians who were British was roughly the same as the proportion of all foreigners who were British.

¹⁴ Teng, *Eurasian*, p. 64, describes the sincization of families where European or American women married Chinese men, which no doubt contributed to this tendency.

¹⁵ The census actually counted foreigners living not only within the Settlement limits, but also a number of nearby areas, such as the ‘outside roads’ to the west of the International Settlement, Pudong (across the Huangpu River from the International Settlement) and those living on opium receiving ships. Indians (who were British subjects) were counted separately.

Table 2. SMC census data for years when the Eurasian population was counted separately.¹⁶

Census year	Number of foreigners	Number of Britons	Foreigners who were British (%)	Number of Eurasians	Inferred estimated number of British Eurasians
1890	3821	1574	41.2	142	59
1895	4684	1936	41.3	260	107
1900	6774	2691	39.7	519	206
1905	11497	3713	32.3	323	104
1910	13536	4465	32.9	481	158

It is likely that the number of Eurasians was actually considerably greater than the numbers stated in the census. We know that Hong Kong officials were aware of substantial under-reporting of Eurasians in the colony's censuses.¹⁷ It is not clear how the Shanghai census was carried out, in particular how the national status of foreigners was established or how it was decided who would be classed as Eurasian. The national status of many Eurasians was not secure, and that could mean that they were sometimes counted among the foreign population, sometimes excluded. There were also naturally Eurasians living at the other treaty ports where there was a foreign presence, though no doubt considerably fewer than at Shanghai, but it is impossible to know their numbers.

If we look more closely at how Eurasians in the treaty ports lived, we can establish that those labelled 'Eurasian' were not a socially or culturally homogeneous group. Many Eurasians with British fathers or ancestors lived as Chinese and would have no attachment to Britain, or means to claim British status, even if they were aware of having had a British parent or other relative. British officials did not generally intervene in the lives of such individuals, and they were therefore largely undocumented in official correspondence.¹⁸ Details of a small number of

¹⁶ Census figures for 1895 – 1910 are from Shanghai Municipal Archives: U1-1-106X. Figures for 1890 are from *NCH*, 18 July 1890, p. 80.

¹⁷ Teng, *Eurasian*, p. 238.

¹⁸ They are also largely absent from this study, primarily because this thesis examines official attitudes and practices, but also because little material is available about such people, apart from

Eurasians who were viewed by British officials as living as Chinese are present in the archive because of claims they made to British status and protection, and some were able to substantiate their claims so that officials were unable to refuse recognition. The Whitfield family based in Xiamen fell into this category. James Whitfield was a tidewaiter in the Customs at Xiamen and married a Chinese woman there in 1863.¹⁹ They had three children, two of whom, Charles and James Whitfield, each married Chinese women in Xiamen in the 1880s and in turn had children by them.²⁰ The family were subsequently described by British officials as living as Chinese, but asserted their British nationality, and the cases of the Whitfield brothers' children and grandchildren were repeatedly brought up by officials who grappled with the contradictions they saw in their status.²¹

It was not unusual for a young Eurasian to know only his or her Chinese or Japanese mother, the British father having left or died, but to be educated in a foreign school in Shanghai, such as the Thomas Hanbury School, an institution founded specifically to educate Eurasian children, or St Francis Xavier's College, a school run by a Catholic order. Even in the absence of their British parent, such Eurasians were therefore to some extent, through their education and surroundings, enculturated as British Shanghailanders, although they presumably felt themselves to have a 'mixed' identity.²² An example from the archives of the British consulate-general at Shanghai is the case of R. Davie, who wrote just after his twentieth birthday in 1920 to the consul-general, Everard Fraser, seeking registration. Davie's father was British and his mother Japanese, but both were dead, the father having died in 1905. Davie was born in Japan but grew up in Shanghai, attending the Shanghai Public School, an institution run along British lines. He had no documentation showing registration of his birth or the marriage of his parents. Despite his father having died fifteen years prior to the date of his

newspaper reports regarding charitable institutions such as schools, and some law reports of criminal court cases involving unregistered Eurasians.

¹⁹ TNA FO 678/2089: copy of marriage certificate.

²⁰ TNA FO 671/463: Memo by H. P. Wilkinson, 2 January 1909.

²¹ TNA FO 228/1659: O'Brien Butler to Jordan, 2 July 1907.

²² See Teng, *Eurasian*, for a detailed consideration of Eurasian mixed identities.

letter, Davie nevertheless was able to suggest that some friends and colleagues of his father would be able to vouch for their being father and son.²³

A significant number of British Eurasians, like the writer of the letter quoted at the beginning of the chapter, appear to have lived as Britons and actively projected a British identity, with apparently little or no sense of Chinese identity, at least in the public sphere, although they may have spoken Chinese. They spoke English fluently having attended foreign-run schools in China, or having been educated in Hong Kong or even Great Britain. As already shown, there were Eurasians in the Shanghai Volunteer Corps (albeit with restricted choice as to the regiment they could join), and there is evidence of some Eurasians taking part in other typical aspects of British treaty port life.²⁴ In 1893, Consul George Jamieson reported to the minister that there were in Shanghai 'a considerable number of the Eurasian class, who by up-bringing, education, and association are in every sense European.'²⁵ William McBain, a Eurasian member of a very wealthy and prominent Shanghai family, represented the most prosperous and well-connected end of the spectrum, listing his club membership in 1933 as including the prestigious Shanghai Club and also the Shanghai Race Club.²⁶ Another prominent Eurasian Shanghailanders, Henry Monsel Cumine, architect and owner of the *Shanghai Mercury* newspaper, also had typical Shanghai British affiliations: as well as the Race Club and freemasonry, he was a member of the Paper Hunt and the St Andrews Society.²⁷ In true Shanghai settler style, origins were celebrated and mythologised in the Cumine household - his family recalled singing Scottish songs in honour of his Scottish forefathers in his home in Shanghai.²⁸

²³ TNA FO 202/457: R. Davie to Fraser, 27 Nov 1920.

²⁴ For a description of British treaty port culture, see Robert Bickers, 'Shanghailanders: The Formation And Identity Of The British Settler Community In Shanghai 1843-1937', *Past & Present*, 159, 1 (1998), 161-211.

²⁵ TNA FO 17/1259: Jamieson to O'Connor, 3 October 1893, enclosure 1 in O'Connor to Kimberley, 19 January 1894.

²⁶ George Nellist, *Men of Shanghai and North China: A Standard Biographical Reference Work* (Shanghai, 1933), p271.

²⁷ Nellist, *Men of Shanghai*, p. 94.

²⁸ Jane Hutcheon, *From Rice to Riches* (Sydney, 2014), p. 85.

At the outbreak of war in Europe in 1914, a number of British Eurasians displayed their patriotism by rushing to enlist along with other Britons in the treaty ports, although there was disappointment and bitterness when Eurasian Charles A. Cooke's application for a commission was rejected, apparently on the grounds of race, which triggered a debate in the letter columns of the *NCH* about the place of British Eurasians. Cooke returned to Shanghai in disgust, but his brother James E. Cooke joined anyway, as a private.²⁹ Edward Selby Little, a prominent Shanghai figure, attempted to clear up the matter of whether Eurasians were barred from commissions by taking the matter up with the War Office in London, who replied that there was no bar to British Eurasians becoming commissioned officers in the British Army.³⁰ William McBain secured a commission and served as an air force pilot, rising to the rank of Major, and returning to Shanghai with decorations including the Military Cross.³¹ Despite this, in 1940 the issue arose again, when Eurasians were said to be barred from enlisting at British training centres.³²

These sketches of Eurasians in China are generalisations based on scant data, their purpose being above all to illustrate the diversity of the people grouped by officials and others under the label 'Eurasian', rather than to recover and represent the voices and identities of British Eurasians in China.³³ Even in the limited way attempted above, there is immense difficulty associated with trying to recover the subjectivities of long-dead people based on fragmentary evidence. Identities may be fluid, multiple and also sometimes contradictory, and it should not be assumed that a Eurasian using a British-sounding name and educated in a British-style school self-identified as British (or exclusively so), or that a Eurasian using a Chinese name, as was true of many from Hong Kong, did not self-identify as British. A further difficulty arises from the sources, since Eurasians are likely to have displayed most prominently the British (or indeed English, Scottish etc.) aspect of

²⁹ Robert Bickers, *Getting Stuck in For Shanghai: Putting the Kibosh on the Kaiser from the Bund: The British at Shanghai and the Great War* (London, 2014), unpaginated ebook.

³⁰ 'Eurasians and the Army', *NCH*, 21 July 1917, p. 128.

³¹ Nellist, *Men of Shanghai*, p. 272.

³² 'Shanghai Contingent: Case of the Eurasian', *NCH*, 24 July 1940, p. 134.

³³ A fuller consideration of issues of Eurasian identities in Hong Kong and China is provided in Lee, *Being Eurasian* and Teng, *Eurasian*.

their cultural identity in their dealings with British officials, or in letters to the English-language treaty port press.

It is possible to reconstruct with a greater degree of confidence the human environment of the treaty ports, especially Shanghai, where most British Eurasians lived. British official treatment of Eurasians, with which this chapter is concerned, needs to be placed in the wider context of treaty port society, and the institutions around which that society was structured, many of which were probably somewhat freer from official influence than would have been the case in Great Britain and in some colonies. Robert Bickers has argued that race was an important aspect of the social and cultural environment of the treaty ports in the twentieth century:

Communal identity and solidarity in Britain in China ... were located most visibly in questions of race, and the polarity between a constructed 'white' British presence and the other 'races' it encountered in China. British Asians or Eurasians muddled these waters and threatened not only that identity but that very presence.³⁴

Concrete examples of exclusionary practices from the unofficial life of the treaty ports are not hard to find, particularly from around the turn of the twentieth century onwards. In some cases this was openly discussed in the press, as with the issue of entry into British units of the Shanghai Volunteer Corps discussed above. Schooling was another area of life where the place of Eurasians was controversial. In 1886 the Masonic School Council founded a school in Shanghai which did not admit Eurasian pupils.³⁵ This policy was reversed a few years later when for financial reasons it was desired to increase the number of pupils attending the school.³⁶ In 1894, at the suggestion of Consul Jamieson, the school was taken over by the SMC and renamed the Shanghai Public School, and in 1897, the educational committee of the school, of which Jamieson was the chair, decided that thenceforth the school would only accept children 'of Western parentage on both sides.'³⁷ This

³⁴ Bickers, *Britain in China*, p. 72.

³⁵ *NCH*, 'The Shanghai Public School', 26 February 1897, p. 336; Arnold Wright and H. A. Cartwright (eds.), *Twentieth Century Impressions of Hong-Kong, Shanghai, and Other Treaty Ports of China* (London, 1908), p. 484.

³⁶ 'The Shanghai Public School' *NCH*, 26 February 1897, p. 336.

³⁷ Wright and Cartwright (eds.) *Twentieth Century Impressions*, p. 484; *NCH*, 12 March 1897, p. 448; 'The Public School Question', letter to the editor by J. Chambers, *NCH*, 12 March 1897, p. 458; *NCH*, 26 February 1897, p.336.

move was debated soon after at the annual meeting of Shanghai ratepayers, with strong opinions expressed on both sides at the meeting and subsequently in the pages of the *NCH*. On the side of the Eurasians, a solid establishment figure in the form of Commander of the Shanghai Volunteer Corps and long-time Shanghai resident Major Brodie Clarke spoke at the meeting, voicing the opinion that the decision to exclude Eurasians was an unprecedented attack on the 'privacy of domestic life.'³⁸ The committee's decision was reversed so that Eurasians could continue to attend the school and would be accepted as new pupils.

The fully independent Weihaiwei School was not bound to follow the wishes of any external board or council, and its policy towards Eurasians was therefore presumably representative of the majority of its customers – mainly China-based British parents who were prosperous enough to pay for their children to attend a British-style boarding school. In 1907 the annual report made by the headmaster of the school was published in the *NCH*, containing the remarkably frank statement that 'So strong is the local prejudice against Eurasians that we have to exclude them as a class, from the school.' He went on in the report to describe the attitude towards Eurasians as 'this extraordinary form of social antipathy'.³⁹

Those Eurasians who obtained a western-style education in China or overseas might encounter discrimination when attempting to enter the job market. It was not unusual for Eurasians to find employment as clerks in foreign firms or in institutions such as the Chinese Maritime Customs Service, where the linguistic skills of those with a command of both English and Chinese could be useful. However, Eurasians were clearly not welcome in some foreign-controlled organisations. In 1919 a correspondent wrote to the *NCH* to complain of a job advertisement in the newspaper which stated that applications from Eurasians and Portuguese would not be considered. The writer went on to clarify that this was not an exceptional occurrence, and that British firms were generally the perpetrators: 'it is worthwhile to remark that advertisements of this distasteful

³⁸ *NCH*, 12 March 1897, p. 449.

³⁹ 'The Weihaiwei School', *NCH*, 23 August 1907, p. 458.

nature have invariably emanated from British firms, representatives of that sense of English fairplay which appears to be sadly lacking in this part of the world'.⁴⁰

Based on the limited sources available it is difficult to establish with any sense of certainty whether open prejudice grew or diminished over time. Certainly, there were more examples of discrimination against Eurasians discussed in the press from the early twentieth century onwards, especially during and after the 1914-18 war. Such a trend would fit chronologically with the well-documented growth of racist ideologies, coupled with the rise of nationalism, over the same period.⁴¹ On that basis, it may well be that discriminatory attitudes and practices were more prevalent in the treaty ports in the later part of the period covered by this study, but it could also be the case that examples of discrimination were more evident and were debated in the press not because discrimination was more prevalent, but rather because it was more often openly challenged. Eurasians who had grown up in Shanghai and been educated in British-style schools were by the early twentieth century adults who were perhaps confident enough of their place in Britain's China world to highlight and speak out against prejudice and discrimination where they encountered it. Certainly, some Eurasians were quick to see British wartime rhetoric of unity and justice as an opportunity to argue for inclusion and against discrimination.

The periodic outpouring of views both in support of and in opposition to discriminatory or exclusionary measures against Eurasians shows that Shanghai's British settler society was deeply divided over the place of Eurasians, in particular the degree to which they should be accepted as members of Shanghai foreign society. Although many of those who spoke out against discrimination in letters to the press identified themselves as Eurasians, not all voices raised in support of the latter group came from Eurasians themselves – there were influential non-Eurasian treaty port Britons who spoke out against prejudice, such as Brodie Clarke and Edward Little. The literature on foreign settler culture in the Chinese

⁴⁰ 'Invidious Distinctions', letter by H. A. Thompson, *NCH*, 19 July 1919, p. 176.

⁴¹ Francisco Bethencourt, *Racisms: From the Crusades to the Twentieth Century* (Princeton, N.J., 2014).

treaty ports has not dealt in detail with the position of Eurasians within the treaty ports, and where Eurasians have been referred to, writers have perhaps presented a somewhat one-sided view, by overlooking the supporters of Eurasians and the victories they achieved, such as in the case of the overturning of the SMC education committee's decision to bar Eurasians from the Shanghai Public School.⁴² British officials living in this context were no doubt exposed to the divergent pressures of these public discourses voiced in the press and elsewhere, as well as pressures from individuals who approached them directly over the issue of Eurasians. They also had to consider the likely responses of their superiors in Beijing and London when they improvised actions where, as was often the case, no applicable policy had been communicated to them.

The national status of Eurasians: official policy and practices

Whereas the question of the national status in China of Chinese British subjects generated hundreds of pages of official documents in the FO and other institutions, the issue of the national status of Eurasians was rarely discussed outside China. This was not because of a significant difference in the size of the population of the two groups – indeed, it may well be that there were more British Eurasians in China than there were Chinese British subjects. The reasons why the FO were neither proactive in, nor very deeply concerned with, policy-making regarding the status of Eurasians in China were twofold: there was, unlike in the case of Chinese British subjects, no significant diplomatic dimension to the issue of whether Eurasians with British fathers were British subjects or to be given British protection, since the Chinese government never claimed them as Chinese subjects or intervened in issues involving them; and furthermore there was, again by contrast with the case of Chinese British subjects, no pressure from British colonies such as Hong Kong or the Straits Settlements to support or protect Eurasians in China. Eurasians had only local supporters among some of China's British settler community.

⁴² See for example a recent article published in China, which focusses entirely on attitudes and practices which served to exclude Eurasian families: Xiong Yuezhi, 'The Question of Interracial Marriage and Mixed-Race Children in Modern Shanghai' 近代上海跨种族婚姻与混血儿问题, *Shanghai daxue xuebao (shehui kexue ban)* 上海大学学报 (社会科学版), vol. 17, no. 4 (July 2010), 17–26.

No official guidance appears to have been given in instructions to consuls in the early decades of British expansion in China as to the status of Eurasians with a British parent in China. Therefore, as a Eurasian population grew up in the treaty ports, local British consular officials responded to their presence in an ad hoc manner, until a clear policy was finally created and disseminated at the end of the nineteenth century. Judge Hornby's instructions to consuls of 1867, which laid down a ruling as to which Chinese British subjects would be eligible for British protection when in China, referring to the 'children of Chinese parents', made no mention of Eurasians, and no official ruling on their status appears to have been forthcoming until the 1890s.⁴³ It is thus unsurprising that the practices of consuls varied: in 1893 Xiamen Consul Christopher Gardner reported to the minister that illegitimate Eurasians whose parents had married subsequent to their birth were generally registered as British subjects: 'The practice has in China universally been to recognise such persons as British subjects, and, though I know of no legal decision on the point, the custom has never been questioned.'⁴⁴ At about the same time, the consul in Shanghai George Jamieson contradicted Gardner's claim when he indicated to Minister Nicholas O'Connor that at that port a less consistent but apparently generally more exclusionary approach had been taken to illegitimate Eurasians: 'In a few cases they have succeeded in getting their names on the Consular Register.'⁴⁵

The FO were first asked for instructions on the status of Eurasians in 1894, by Minister O'Connor.⁴⁶ He was prompted to do so by despatches received almost simultaneously from the above-mentioned consuls at Xiamen and Shanghai, seeking guidance on the proper course to be taken in response to requests for recognition as British subjects by illegitimate Eurasians. At Xiamen, the individual involved was referred to simply as 'Mr W', the 'son of an Englishman, who married

⁴³ Hornby, *Instructions*, p. 3.

⁴⁴ TNA FO 17/1259: Gardner to O'Connor, 2 November 1893, enclosure 3 in O'Connor to FO, 19 January 1894.

⁴⁵ TNA FO 17/1259: Jamieson to O'Connor, 3 October 1893, enclosure 1 in O'Connor to FO, 19 January 1894.

⁴⁶ TNA FO 17/1259: O'Connor to FO, 19 January 1894.

his mother, a Chinese, after W.'s birth.'⁴⁷ Mr W's case was raised in a long list of 'cases of doubtful nationality' compiled by Consul Gardner. From Shanghai, O'Connor received a more focussed enquiry centred on the status of two Eurasian sons of James E. Cooke, who was said to have married their Chinese mother after their births. Jamieson gave further details in support of the Cookes' claim to some degree of protection in his despatch to Minister O'Connor: they were 'in each case recognized by the father, they have been given a European education, and they live and dress in European style'; the two men were 'employed in foreign houses of business, they associate with foreigners, and except for the fact of birth, they have nothing in common with the native population.'⁴⁸ Consul Jamieson went on to express considerable sympathy for the plight of other Eurasians like the Cookes in China, who were, 'through no fault of theirs, but simply from the misfortune of their birth, denied all Consular protection.' Jamieson added to the persuasiveness of his argument by suggesting that if Britain refused to offer them protection and take them under its jurisdiction, it was possible that they might be tortured by Chinese officials should they break Chinese laws (although he also stated that Chinese officials assumed that such children were in fact 'English'). He proposed to solve the problem by suggesting that illegitimate children of British fathers should be given the status of British protected persons, 'provided that such children have been *de facto* recognized by the father as such, and that they have adopted the ordinary European style of dress.'⁴⁹ O'Connor forwarded Jamieson's suggestion to the FO and gave it his support.

The FO felt little difficulty in agreeing to Jamieson's proposal, having already in 1889 agreed to a similar policy being adopted in the case of a British subject, N. P. Kingdom, who had an illegitimate son in Japan 'by a Japanese woman'. It was stressed that the Cookes would, like Kingdom's son, only be 'British subjects for

⁴⁷ It was clear from the context that the meaning of the confusing wording used by Gardner was that Mr W's parents had married (each other) after Mr W was born, but one anonymous FO reader annotated the despatch with the inscription 'incest'. TNA FO 17/1259: Gardner to O'Connor, 2 November 1893, enclosure 3 in O'Connor to FO, 19 January 1894.

⁴⁸ TNA FO 17/1259: Jamieson to O'Connor, 3 October 1893, enclosure 1 in O'Connor to FO, 19 January 1894.

⁴⁹ TNA FO 17/1259: Jamieson to O'Connor, 3 October 1893, enclosure 1 in O'Connor to FO, 19 January 1894.

the purpose of protection' – their nationality would not be affected, despite the fact that it had been made clear by the Shanghai consul that they had no nationality if they were not British, since the Chinese did not claim them as Chinese subjects. The FO made no mention of the stipulations regarding dress suggested by Jamieson in their reply.⁵⁰ It seems that the FO's positive response in 1894 to Jamieson's suggestion was not communicated as a general policy to all consuls, since Consul Gardner, still at Xiamen, once again raised the issue of illegitimate Eurasians with the minister (by then Claude MacDonald) in 1898 and the issue was passed on once more to the FO. In his despatch, MacDonald suggested that whether or not they were 'brought up as Europeans' should not affect the claim to protection of such children. This was an unusual view, as we shall see, since the question of whether to extend British protection to illegitimate Eurasians was almost always decided in combination with enquiries about their family, upbringing or way of life.⁵¹ The FO response in 1898 was broadly the same as in 1894, but this time included clear instructions that illegitimate Eurasians could be registered as British protected persons only where they were: 'formally recognized by their fathers'; where the parents had 'subsequently inter-married'; and where they had 'adopted the European mode of dress'.⁵² The inclusion of the latter stipulation in particular shows how emphasis was placed on Eurasian children properly displaying enculturation as Europeans, in particular through their style of dress, and that the emphasis on dress was driven by London, as well as by officials in China.

The minister sent out a circular to consuls on 17 March 1898 to communicate the FO policy to them, but it seems that in the instructions consuls received, it was not made clear that illegitimate Eurasians were only eligible for registration as British protected persons if their parents had gone on to marry after their birth.⁵³ As a result, some consuls did not follow the policy as laid down by the FO and illegitimate Eurasians were sometimes registered as British protected persons

⁵⁰ TNA FO 17/1259: FO to O'Connor (draft), 2 May 1895.

⁵¹ TNA FO 228/1235: Macdonald to FO, 1 November 1897.

⁵² TNA FO 671/462: FO to MacDonald, 29 January 1898 (copy), enclosed in Cox to Jeffery, 31 May 1928.

⁵³ TNA FO 202/457: Circular to consuls no. 28, 8 April 1920.

even if their parents were not married. Pelham Warren as acting consul-general at Shanghai in 1902 presumably knew the correct FO policy, since he proposed to Minister Ernest Satow that approval should be sought from the FO for the extension of British protected person status to illegitimate Eurasians whose parents had not married.⁵⁴ Satow supported this proposal and asked the crown advocate if it might be advisable to include a provision for such a policy in the new OIC then being prepared.⁵⁵ The crown advocate advised however that it was not necessary to include it in the OIC, and it is not clear whether Satow ever sought FO approval for a change of policy. It seems anyway that the 1898 policy – which stated that only illegitimate Eurasians whose parents had married could be registered as British protected persons – was not altered, since consuls were informed in 1920 by a circular that the 1898 ruling still applied. This had the effect of tightening the practice of some consuls who had hitherto registered children whose parents remained unmarried.⁵⁶ This policy remained in force in subsequent years, and was included in the *Compendium of Instructions to Consular Officers* provided by the Legation to consuls in 1927, but even in the 1920s after the FO policy had been reaffirmed by the 1920 circular, consuls retained a tendency to bend or misapply the rules by adopting varying local practices, for example in renewing the registrations of those who had been incorrectly registered as British protected persons. Such a situation occurred in the case of A. J. Maitland, who had been registered over a number of years as a British protected person, but who did not strictly qualify since his British father's marriage to his Chinese mother was not valid under British law. His registration was continued in 1923, following a request made through his British employer, notwithstanding the instructions in the 1920 circular that the parents of illegitimate Eurasians must have subsequently married for them to be eligible for British protection.⁵⁷

⁵⁴ TNA FO 228/1449: Satow to Acting Crown Advocate D. McNeill, 4 January 1902.

⁵⁵ Satow's apparent concern for the welfare of illegitimate Eurasian children is perhaps unsurprising given that he had fathered two illegitimate children with a Japanese woman while working as a consul in Japan. See Ian C. Ruxton (ed.), *The Diaries of Sir Ernest Mason Satow, 1883-1888: A Diplomat In Siam, Japan, Britain and Elsewhere* (Morrisville, N.C., 2016), p. iv.

⁵⁶ TNA FO 671/467: Giles to FO, 10 November 1934.

⁵⁷ TNA FO 671/459: Shanghai to Tianjin (draft), 9 June 1923.

The status of British protected person which was given to certain Eurasians deserves some analysis, since its deployment in the treaty ports had implications for the nature of British governance, not least because any means by which British protection was extended more widely over people or things in the treaty ports represented a greater degree of British expansion in China. British protected person was a category with unclear origins and somewhat lacking definition, since it was a status granted under royal prerogative rather than statute law. William Hall, a contemporary legal scholar, wrote in his 1894 work on British jurisdiction overseas that, 'it rests indeed upon no principle whatever'.⁵⁸ Often, but not always, the extension of British protection to people who were not British subjects went hand in hand with the institution of extraterritoriality, and the British had by the late nineteenth century already for many years in the Ottoman Empire extended protection to various groups for a diverse range of reasons, including to employees of British consulates or concerns there, to Ionians (who were protected because the Ionian Islands were a British protectorate), and to Russian Jews in Syria.⁵⁹ In the Arabian Gulf, the granting of British protection to favoured individuals was an important tool, deployed by India's Political Residents there in order to create networks of local collaborators ('native agents') through which British influence could be extended.⁶⁰

In China, too, members of certain groups had been given British protection on the basis of no legal principle, but unlike in the Middle East, it does not appear that protection was ever granted in a consciously goal-oriented way. Rather, protection was generally extended in a somewhat ad hoc manner to some of those who

⁵⁸ William Edward Hall, *A Treatise on the Foreign Powers and Jurisdiction of the British Crown* (London, 1894).

⁵⁹ For British protected persons in territories where there was no extraterritoriality, see James Onley, *The Arabian Frontier of the British Raj: Merchants, Rulers, and the British in the Nineteenth-Century Gulf*, (Oxford, 2007), p. 100; on Ionians see C.R. Pennell, 'The Origins of the Foreign Jurisdiction Act and the Extension of British Sovereignty', *Historical Research*, 83, 221 (2009), 465–85, p. 473; for extension of British protection to British employees and Russian Jews, see Hall, *Foreign Powers and Jurisdiction of the British Crown* (London, 1894), p. 137. Later, with the growth of geographical areas referred to as 'British Protectorates', large populations in Africa and the Middle East became British protected persons, like the Ionians, by virtue of where they were born, rather than who they were.

⁶⁰ Onley, *The Arabian Frontier*.

lobbied for it, sometimes without the sanction of the FO.⁶¹ Chiara Betta has described how many Jews of Baghdadi origin were granted the status of British protected persons or even registered as British subjects in Shanghai from the 1860s onwards, in particular those employed by the Sassoon firms which played important roles in trade between India and China and were influential in Shanghai.⁶² Up to 1884, the OICs were silent on British protected persons, but from 1884 onwards, British protected persons were specifically included within the meaning of the term British subject in the OICs.⁶³

In the case of Eurasians, British protected person status seems to have been granted through a sense of moral obligation, emotional connection, and also due to a fear that unregistered Eurasians who lived as foreigners might otherwise be punished as Chinese if caught up in serious criminal matters, which would lead to foreign public outrage, rather than because it was thought that patronage of Eurasians would be repaid through any direct benefit to British interests. As already noted above, there was a vocal pro-Eurasian lobby in Shanghai, prepared to speak out where injustices were perceived to have taken place. Although not expressly articulated in the archival sources, it is likely that fears around loss of prestige, a perennial British concern, were also a motivation in the protection of Eurasians who might be viewed as British by Chinese authorities. Employees of British firms who were not British subjects were sometimes given protection in China (and presumably elsewhere) under the FO's general consular instructions in the early part of the twentieth century, and some Eurasians were also protected on that basis.⁶⁴

There were several significant practical consequences of holding the status of British protected person for those living in China. British protected persons were

⁶¹ Chiara Betta, 'Marginal Westerners in Shanghai: The Baghdadi Jewish Community, 1845-1932', in Bickers and Henriot (eds.), *New Frontiers: Imperialism's New Communities in East Asia*, 38-54, pp. 43-44. See also Sarah Abrevaya Stein, 'Protected Persons? The Baghdadi Jewish Diaspora, the British State, and the Persistence of Empire', *The American Historical Review*, 116, 1 (2011), 80-108.

⁶² Betta, 'Marginal Westerners in Shanghai', p. 43.

⁶³ See the 1884 OIC, *The London Gazette*, 1 July 1884, p. 2992.

⁶⁴ TNA FO 671/461: minute of G. V. Kitson, 1 April 1925.

subject to British consular jurisdiction, meaning that for the purposes of civil or criminal litigation where they were the defendant, the applicable forum would be the SCC at Shanghai, or elsewhere the local British provincial (consular) court in China, and any sentence passed would be served in British prisons. As with British subjects, when a British protected person complained in a civil or criminal matter against a Chinese subject, the British consul would take up the case with the Chinese authorities, and where a mixed court existed, a British assessor would sit with the Chinese official to hear the case. British protected persons could expect consuls to intercede on their behalf where their rights or interests were infringed or threatened by Chinese or other foreign parties, as many Baghdadi Jews with British protection did in matters concerning the opium trade.⁶⁵ British protected persons therefore enjoyed many of the privileges of British subjects in China, but their status was not equal to that of British subjects in important practical ways. Those who were registered at consulates as British protected persons were not allowed to register land at the consulate, which was a serious disability for those wealthy enough to own property.⁶⁶ Consuls were also instructed that they were neither to marry British protected persons nor to register their deaths at the consulate.⁶⁷ It is important to note that the status of British protected person was far less 'durable' than that of British subject. It was granted on no legal principle and could equally be withdrawn on the basis of no principle, which put illegitimate Eurasians in a precarious position.

The policies which were established by the FO dealt only with the specific question of the status of certain illegitimate Eurasians. British officials did not always know of or follow the policies correctly, and they also encountered Eurasians in circumstances where their national status was in issue but where the FO policies were not applicable. Leaving aside official policy, it is possible to generalise about the factors which were held by consuls to be relevant in considering the issues raised by the national status of Eurasians. Apart from details of parentage which

⁶⁵ Betta, 'Marginal Westerners in Shanghai'.

⁶⁶ TNA FO 228/2156: Pelham-Warren to Satow No. 74, 27 April 1906. Important Baghdadi-Jew landowners such as the Sassoons and S. A. Hardoon were unaffected as they were British subjects rather than British protected persons.

⁶⁷ Major, *A Compendium of Instructions to H.M. Consular Officers* (Beijing, 1927), p. 27.

demonstrated blood ties with Britain, there were certain personal features, the presence or absence of which was emphasised in minutes, memoranda and despatches time and again as being material to the question of the rights of Eurasians to British status or protection. These were broadly the same details which Consul Jamieson had highlighted in his despatch to Minister O'Connor in 1893 supporting the registration of the two Cookes as British protected persons: European (especially British) education, living as Europeans (for example wearing European clothes), and employment in foreign (again, especially British or British-led) firms or institutions. Where younger Eurasians were under consideration, the question of the degree of the (Chinese or Japanese) mother's influence over the child might also be raised. All of these performative factors were used to ascertain whether the person in question should be accorded a degree of inclusion.

It was the absence of many of these indicators of Britishness in the members of the Whitfield family which caused their national status to be repeatedly questioned by successive consuls at Xiamen and Shanghai, even though none of the family was illegitimate. The three sons of James Whitfield were listed in Consul Gardner's 1893 list of doubtful cases, apparently for no other reason than that they were Eurasians living as Chinese: 'C.W., J.W., and L.W. Father British, mother Chinese, born in wedlock in China. Are now living as Chinese. I have decided they are British subjects until they renounce their allegiance.'⁶⁸ By questioning their status, Gardner seemed to be suggesting that way of life and national status should be aligned, but the FO confirmed that they were British subjects. The Whitfields were again the subject of official discussion when in 1907 Pierre O'Brien Butler, then consul at Xiamen, raised doubts as to the status of the wives and children of James (the second) Whitfield and his brother Charles, who were registered as British subjects, on the basis that the marriages of James and Charles Whitfield to their Chinese wives might not be valid, since they were made 'in the same way as in the case of a marriage between two Chinese subjects'.⁶⁹ He concluded his

⁶⁸ TNA FO 17/1259: Gardner to O'Connor, 2 November 1893, enclosure 3 in O'Connor to Kimberley No 16, 19 January 1894. There can be very little doubt given the small size of the British community at Xiamen that C.W., J.W and L.W. refers to the children of James Whitfield: Charles, James and Louis Whitfield.

⁶⁹ TNA FO 228/1659: P. O'Brien Butler to J. Jordan, 2 July 1907.

despatch with the statement that 'all the members of the Whitfield family have from early years dressed and lived as Chinese and been practically undistinguishable from their Chinese neighbours.'⁷⁰ The crown advocate was asked for his opinion, which was that the marriages were valid and thus the wives and children were all British subjects.⁷¹ A member of the third generation of Whitfields in China, Peter Siong Whitfield, encountered suspicion when applying for a passport in Shanghai in 1935, not least because on the application form 'he did not fail to include the Chinese names of five children all born at Amoy [Xiamen]'.⁷² Although consuls never made strenuous efforts to deny the Whitfields' right to be registered as British subjects, and the Whitfields managed to maintain their British status, they were nevertheless always under suspicion, because of their way of life.

Illegitimate Eurasians with less secure claims to British nationality or protection than the Whitfields, but who performed their Britishness through such practices as the clothing they wore, the people they associated with, and the language they spoke, often received sympathetic treatment at the hands of consuls. For example, in 1924 registration at the Shanghai consulate as British protected persons was sought for J. J. Maguire and his sisters L. V. Maguire and K. Maguire, who were the children of a lighthouse keeper and his Japanese wife, said to be 'one of the necessary women regularly supplied by the Customs under the title of housekeeper to the foreign light-keepers'.⁷³ This was clearly a very lowly background in terms of social status, light-keepers being unskilled and the lowest paid foreign employees of the Customs.⁷⁴ Their claim was made more tenuous by the facts that the parents had never married and that by 1924 the children's British father was long dead.⁷⁵ The application to the consulate was made on the children's behalf by Brother Faust of St Francis Xavier's College, where J. J. Maguire had been educated. In the course of internal deliberations as to whether the

⁷⁰ TNA FO 228/1659: P. O'Brien Butler to J. Jordan, 2 July 1907.

⁷¹ TNA FO 671/463: memorandum by H. Wilkinson, 2 January 1909.

⁷² TNA FO 671/467 minute of 12 Feb 1935 (initials of writer illegible).

⁷³ TNA FO 671/461: memorandum of J. P. Hutchinson, 25 August 1924.

⁷⁴ Catherine Ladds, *Empire Careers: Working for the Chinese Customs Service, 1854–1949* (Manchester, 2013), p. 81.

⁷⁵ TNA FO 671/461: memorandum of J. P. Hutchinson, 25 August 1924.

children should be registered as British protected persons, the Consul-General Sidney Barton asked 'How and where was the son brought up and what is he doing now?'.⁷⁶ It being ascertained that the children had been brought up as Europeans, and that J. J. Maguire (the son) worked for a foreign firm, they were all registered as British protected persons. A similar case presented itself in the shape of the application for registration as a British protected person of Joseph Henry in 1925. Henry was a pupil of the Thomas Hanbury School, the illegitimate son of a British father and a Chinese mother. His father had died in 1915, and although specific details of Henry's way of life were not recorded (his degree of fluency in English, style of dress and other cultural markers would however have been evident when he had visited the consulate to be interviewed), it was pointed out in the memorandum on the case that 'He sees his mother for not more than a day or two each month, his permanent residence being the school.'⁷⁷ That fact was presumably noted because it implied a good deal about the young man's cultural orientation and the influences which shaped his outlook. He was provisionally registered as a British protected person, but with the proviso that this would be reviewed when he reached the age of twenty-one, since there was 'no guarantee that he will retain his British affiliations after leaving school.'⁷⁸ The 'racial dividend' in the case of Eurasians was, then, contingent and uncertain.⁷⁹

Eurasians and the British Courts

As already noted, an important consequence of being registered in China as a British subject or a British protected person was that those so registered were subject in China to British consular legal jurisdiction. As a result, there are records of the dealings of British officials with Eurasian individuals in the context of criminal and civil court cases in British courts which reveal a good deal about official attitudes and practices towards British Eurasians. In practice, a Eurasian might even come under the jurisdiction of British courts in China if they were

⁷⁶ TNA FO 671/461: minute by S. Barton, 26 August 1924.

⁷⁷ TNA FO 671/461: memorandum of G. V. Kitson, 13 May 1925.

⁷⁸ TNA FO 671/461: minute by G. V. Kitson, 15 May 1925.

⁷⁹ This is Harald Fischer-Tiné's term, already referred to in chapter two (see p. 123). Fischer-Tiné, 'Hierarchies of Punishment in Colonial India', in Fischer-Tiné and Gehrmann (eds.), *Empires and Boundaries*, 41–65.

neither a British subject nor a British protected person: whereas it could be difficult to prove to the satisfaction of a consul that one had a right to registration and protection, British officials in China were sometimes prepared to assume jurisdiction over those whose status was questionable when it was expedient to do so. Where British courts did not take jurisdiction but where there were mixed courts, British officials would still deal judicially with Eurasians who were neither British subjects nor British protected persons but had British connections, since a British official would sit as the assessor in the case alongside the Chinese magistrate. In cases heard in either type of court, the way that British officials treated Eurasians demonstrated clear patterns of behaviour, which serve to indicate an implicit official view of the treaty ports as colonial spaces, and the status of their inhabitants as treaty port 'citizens', with certain (albeit limited in the case of Eurasians) rights and privileges. In the following section I will illustrate this by focussing on the cases of two Eurasians in Shanghai, William Cance and Thomas Crank, who were both tried at different times in the British consular courts and the Shanghai Mixed Court.

William Arthur Cance was an illegitimate Eurasian who was accused of using forged 'chits' (a kind of note regularly used at the treaty ports to make purchases on account) to obtain goods under false pretences from a foreign store in May 1893. This case occurred before the FO had created its policy which provided that illegitimate Eurasians could, under certain conditions, be given British protection. As neither a British subject nor under British protection, his case was heard in the Mixed Court before the Chinese magistrate and Shanghai Vice-Consul George Playfair, sitting as assessor. Cance's sentence, decided in consultation with the British assessor, was twelve months' imprisonment. The sentence was issued with the request that it be served in the British consular gaol: in an explanatory despatch to Consul-General Nicholas Hannen, Playfair explained that the Chinese magistrate had departed from the normal procedure – the sentencing of the man to be punished under Chinese law according to Chinese practices – 'prompted by his own instincts of humanity and listening to my advice', so that Cance would 'not be compelled to associate with native criminals'. However, Playfair expressed his concern that under different circumstances, for example before a different

magistrate or where a different crime had been committed, it was possible that a 'semi-European' like Cance might be subjected to punishment 'in accordance with native methods but revolting to the European mind.' Playfair went on to suggest to Hannen that 'the natural children of British fathers whenever the father has recognised such children and brought them up as Europeans' should be given British protection to prevent them being subjected in future to Chinese legal process and especially Chinese punishment regimes.⁸⁰ In the case of Cance, we therefore see again an emphasis on cultural competence in the discussion of who should be included under British protection. Cance was accused of further crimes of the same kind in December 1897, this time obtaining champagne under false pretences from the tent of the Club Concordia at the Shanghai Races. The case was heard this time by the SCC, before Chief Justice (formerly also Consul-General) Hannen and a jury, and Cance was found guilty and sentenced to two months' imprisonment with hard labour.⁸¹ Almost immediately after his release from prison, Cance was again accused of a similar offence, this time obtaining goods from a Chinese store by signing chits in a false name. He pleaded guilty and was sentenced to three months' hard labour, with the additional condition that on release he would be required to find security for good behaviour of one thousand dollars, or be deported.⁸² On release Cance could not find the security required and was accordingly deported to Hong Kong.⁸³ The act of deportation was a *de facto* recognition of a kind of British status, and the fact that Cance was punished in this way highlights a peculiar aspect of 'protection' which is not obvious from the terminology itself: to be a protected person meant also to be amenable to British discipline, including forcible removal through deportation. Protection therefore also meant subjection, even if one was not in fact a subject. Whether a British protected person should be deported, if one followed strict legal principles, was a difficult question, but it was the kind of question that was left unasked as British officials acted according to what was expedient in practice, instead of behaving in

⁸⁰ TNA FO 671/204: Playfair to Hannen, 13 May 1893. Clare Anderson has described similar favourable treatment given to Eurasians in India. See Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Oxford: 2004), p. 121.

⁸¹ 'R. v. Cance', *NCH*, 24 December, 1897, p. 1146.

⁸² 'R. v. Cance', *NCH*, 30 May 1898, p. 948.

⁸³ 'R. v. Cance', *NCH*, 29 August, 1898, p. 410.

the strictly principled manner implied by more stereotypical views (and self-portrayals) of British officialdom.⁸⁴

Thomas Reginald Crank was an illegitimate Eurasian who had been educated at the Thomas Hanbury School. His first offence, the theft of a watch committed at the age of eighteen, was tried in the British Police Court at Shanghai in May 1908. The court heard that Crank had worked at the Shanghai-Nanking Railway Company, but had recently been dismissed. It was said by a witness that Crank's father 'had done his best for the lad and had taken a lot of trouble to find him different kinds of employment.' Police Magistrate Gilbert King sentenced Crank to a suspended sentence of one year, stating that he was treating him leniently in view of his young age.⁸⁵ Crank appeared in a British court again in January 1910, this time the SCC before Judge Havilland de Sausmarez, charged with forging a 'compradore order' with intent to defraud.⁸⁶ Again, Crank's family background was discussed in court, this time in some detail. The court report paraphrased the crown advocate, Hiram Parkes Wilkinson: 'This was the result of one of those unfortunate cases where the original marriage – an irregular marriage – had been followed by a second marriage – a regular marriage.' It was also revealed that Crank's father had cut off relations with his son. A strikingly emotional tone was displayed in the language used by officials in the courtroom, suggesting that a lot was felt to be at stake, despite the lack of any diplomatic or hard political significance to the case. The crown advocate related: 'It was a pitiable case, but this young man had been in trouble before, and it was very difficult to suggest what could be done with him.' Judge de Sausmarez appeared to demonstrate considerable sympathy for the defendant, commenting that 'people have no right to bring children into this world and not take care of them.' When passing sentence de Sausmarez declared himself to be treating Crank leniently owing to his youth, and gave him four months' imprisonment with hard labour.⁸⁷

⁸⁴ Examples of such viewpoints abounded in the contemporary press and are evident too in British official archives.

⁸⁵ 'Rex (H. E. Mulley) v. T. R. Crank', *NCH*, 6 June 1908, p. 630.

⁸⁶ A compradore order was a draft payable by the compradore (Chinese agent acting for a foreign firm or organisation) from a budget allocated to him to meet a foreign firm's expenses. See Giles, *A Glossary of Reference on Subjects Connected with the Far East*, p. 57.

⁸⁷ 'Rex v. T. R. Crank', *NCH*, 4 February 1910, p. 278.

In 1914 Crank was again in court before Judge de Sausmarez, accused of forging compradore orders to obtain goods by fraud. This time the charges were more serious and this was now the third offence in relatively quick succession. The tone of the proceedings was, perhaps unsurprisingly, much altered. The judge not only passed a long sentence – one year's hard labour – but also raised questions as to Crank's nationality, finding it sufficient for the court's purposes that he was on the register, but asking that the consul-general be consulted as to whether Crank's registration as a British subject should be renewed.⁸⁸ Crank was subsequently denied registration and in July 1917, when he was charged with fraud once more, the case was heard in the Mixed Court by the Chinese magistrate and British assessor (and consular official) Penrhyn Grant Jones.⁸⁹ Crank was alleged on this occasion to have obtained a significant sum of money, which he rapidly spent, by means of false pretences and forgery. His past record was read to the court and Assessor Grant Jones announced a long sentence, seven years' penal servitude, delivering at the same time a stern lecture:

You are, I believe, partly of British birth and I should have thought that, at a time like the present, one drop of blood might have saved you from committing these terrible offences. At a time when every man with any drop of British blood in him is doing his best for his country you have apparently, according to the financial evidence before us, been living a life of extravagance.⁹⁰

It was surely ironic that Crank should be lectured on his moral obligations as the possessor of British blood while having been denied registration at the British consulate and while being sentenced in a court which was, nominally at least, a Chinese court, and which existed primarily to deal with Chinese criminals in the Shanghai International Settlement. Was Crank not being castigated for failing to shoulder the responsibilities of being British even while being denied enjoyment of the rights? The situation was not in fact so straightforward, for despite the outraged tone of his remarks, after the proceedings were concluded, Grant Jones demonstrated that Crank was not entirely disowned, by showing concern over the conditions under which his sentence would be served. There was no longer a

⁸⁸ Rex (S.M.P.) v. T. R. Crank', *NCH*, 7 November 1914, p. 453.

⁸⁹ 'Alleged False Pretences', *Shanghai Times*, 24 July 1917, p. 6.

⁹⁰ 'Seven Years' Penal Servitude', *NCH*, 11 August 1917, p. 325.

danger, as with the case of Cance described above, that Crank would be placed in the hands of the Chinese authorities having been sentenced by the Shanghai Mixed Court, because the control and management of the latter institution had by this time been taken over by the consular body (a committee of foreign consuls in Shanghai) and the SMC, which had its own prison in the International Settlement.⁹¹ Even so, two days after passing sentence, Grant Jones made a special enquiry to the registrar of the Mixed Court, an employee of the SMC, in order to ascertain in detail the nature of the prison regime which would be applied to Crank, specifically asking to be informed of 'the nature of the confinement, routine, diet, dress, work and exercise of the prisoner.'⁹² It was clearly important to the consul that the prisoner's sentence should be performed in a way appropriate to his cultural orientation, irrespective of his formal national status.

Thomas Crank wrote letters to the consul-general, stressing his having been brought up 'under the Church of England', and he also managed to marshal pillars of the British community in the form of the Reverends C. J. F. Symons (dean of the cathedral) and J. Darroch to intercede with the authorities on his behalf, in order to get his sentence reduced and to achieve registration at the British consulate-general.⁹³ After his release in 1920, and in response to his request for registration, Consul-General Everard Fraser laid down in 1921 the condition that Crank must keep out of trouble for one year in order to earn the right to be registered at the British consulate-general again.⁹⁴ He succeeded in getting himself re-registered in 1923, and by 1924 he was the defendant in a civil action over a debt in the SCC.⁹⁵ Legal principle played very little part in determining how Crank and others like him in the treaty ports were treated. The British state created categories of people, with ties to the International Settlement, and jointly managed the treatment of them in conjunction with employees of the SMC. Their status as

⁹¹ John King Fairbank and Denis Crispin Twitchett (eds), *The Cambridge History of China: Republican China, 1912-1949, Pt. 1* (Cambridge, 1978), p. 151; George Williams Keeton, *The Development of Extraterritoriality in China*, Vol. 1 (London, 1928), pp. 375-80.

⁹² TNA FO 656/141: P. Grant Jones to M. O. Springfield, 8 Aug 1917.

⁹³ TNA FO 671/459: T. R. Crank to S. Barton, 28 December 1922.

⁹⁴ TNA FO 671/459: unsigned and undated memorandum.

⁹⁵ US NARA, RG 8274, Archives of the SMP Special Branch, file D.6183, Notes on Foreign Criminals, March 1936; 'Counsel's Admission he was Fooled', *NCH*, 8 March 1924, p. 380.

British protégés within such processes, and the position it gave them within the colonial relations at play in Shanghai, worked towards the making of the International Settlement as a variety of British colonial space.

Conclusion

In the Chinese treaty ports, Eurasians were sorted by British officials into those who could be included, and those to be excluded, based on their degree of cultural competence in British ways. This evidence supports Stoler's assertion that colonial racial theories depended on more than just inherited physical properties: 'European food, dress, housing, and morality were given new political meanings in the particular social order of colonial rule.'⁹⁶ Furthermore, and as has also been put forward in the work of Stoler and other scholars, colonial categories were complicated and the boundaries defining where people were placed in relation to them were unclear and unstable. In fact, my findings in this chapter suggest that the much-used word 'boundary' needs to be handled carefully since it may seem to imply a clear dividing line, but such clear lines, although rhetorically sharply drawn – did not exist in practice. For example, when Eurasians were granted the status of British protected persons, they gained a label which granted them some rights but which was also a hazy, uncertain position, and one which could easily be lost. On the other hand, even when denied any kind of registration, Eurasians like Cance and Crank were not excluded entirely. British officials intervened following their sentencing in the Mixed Court and ensured that special treatment was accorded to them when it came to inflicting punishment. It is therefore not at all clear where a theoretical boundary dividing the included and the excluded could be placed. Such a situation accords somewhat with the 'unclarified sovereignties' discussed by Stoler and McGranahan, writing on the subject of more recent US imperialism, who assert that 'Uncertain domains of jurisdiction and ad hoc exemptions from the law on the basis of race and cultural difference are guiding and defining imperial principles.'⁹⁷ Despite the generally-held assumption that states and state actions tend towards the assertion of boundaries and the tightening of categories, the

⁹⁶ Stoler, 'Rethinking Colonial Categories', in Dirks (ed.), *Colonialism and Culture*, p. 321.

⁹⁷ Ann Laura Stoler and Carole McGranahan, 'Refiguring Imperial Terrains', *Ab Imperio*, 2006, 2 (n.d.), 17–58, p. 26.

rhetoric of clear boundaries as also that of firm legal principles was not borne out in practice.

The contents of this chapter support a conclusion which was also apparent from the findings of the earlier chapter on Chinese British subjects: legal definitions which prescribed who qualified as a British subject were often severely misaligned with conceptions of British identity held by British officials. Lees, writing about late nineteenth- and early twentieth-century colonial Malaya, has stated that 'The British government used an expansive approach to British subjecthood, one that disregarded race and social position. It did not assume that British subjects shared a cultural identity or that they had a single set of national loyalties.'⁹⁸ While British *law* did indeed accord subjecthood based on principles which disregarded race and class, it would be misleading to translate this into a generalisation about the approach taken by the British government in treaty port China as well, perhaps, as other locations. British officials in the FO and in China clearly believed that there were some, marked out by both heredity and cultural competence, who shared a bond that was not contiguous with nationality, and which entitled them to a degree of inclusion not provided for in the law. British law did not provide a framework within which to differentiate easily, but that does not mean that distinctions were not made in practice (or indeed in policy). It was presumably because he had absorbed such ideas that the writer of the letter quoted from at the beginning of this chapter appealed for entitlement to the 'higher estimation' he believed Eurasians deserved.

There was a *de facto* recognition that growing up enculturated as British in the colonial spaces of the treaty ports created some entitlement to British protection. In establishing that under certain conditions, it was possible through birth, education and employment in the treaty ports to become a British protégé, British officials demonstrated their implicit understanding of the nature of the treaty ports as foreign colonised spaces. As the population of Eurasians grew up at the treaty ports, and especially Shanghai, the actions of British officials in dealing with them

⁹⁸ L. H. Lees, 'Being British in Malaya, 1890–1940', p. 80.

through flexible, culturally-contingent responses, contributed to the shared understanding of the Britishness of the International Settlement of Shanghai, and supported the settler culture which British officials would later become increasingly concerned about as withdrawal from China and the 'modernisation' of relations was planned and gradually implemented from the late 1920s onwards.⁹⁹

⁹⁹ A process described in Bickers, *Britain in China*.

Chapter Five - Indian British subjects, colonial difference and British governance in China

In 1908, at the British Police Court at Shanghai, Jawalla Singh was charged with assault and with being drunk and disorderly in the gurdwara.¹ He was found guilty and Judge Frederick Bourne sentenced him to a month's imprisonment and threatened him with deportation. The judge was reported making certain comments as he passed sentence:

It was quite clear to his Worship that prisoner was not a fit man to live in this country. If there were going to be Sikhs here at all they must be good Sikhs.²

Judge Bourne's comment is notable not only for the patronising manner, commonly adopted by British officials in China when lecturing Indians, in which he addressed Jawalla Singh. It is also noteworthy because he raised a question which was repeatedly asked in relation to Indians of the 'martial races', within which category Jawalla Singh, as a Sikh, was undoubtedly placed: on what terms was the presence of such men in China acceptable or desirable?³ For although these men were undeniably British subjects, British officials did not view their migration to China, to take advantage of the opportunities created by the foreign presence there, as representing the exercise of their rights as British subjects to benefit from British expansion overseas. Just as with the Chinese British subjects discussed in chapter three, British officials were concerned to ensure that British interests were not harmed by the presence and activities in China of British subjects such as Jawalla Singh. Although, in contrast with Chinese British subjects and Eurasians, their status as British subjects was secure, the fitness of Indians to inhabit British colonial spaces in China was constantly under scrutiny and the implications of their presence and actions there were the cause of much official anxiety and

¹ A gurdwara is a Sikh place of worship.

² 'R. (S.M.P.) and Mishra Singh v. Jawalla Singh', *NCH*, 6 March 1908, p. 569. Jawalla Singh was deported after he had served his sentence in prison (*NCH*, 3 April 1908, p. 41).

³ Martial race theory is discussed below. Works on martial race theory include Heather Streets, *Martial Races: The Military, Race and Masculinity in British Imperial Culture, 1857-1914* (Manchester, 2004); Thomas R. Metcalf, *Ideologies of the Raj* (Cambridge, 1995), especially pp. 125-8; Gavin Rand, "'Martial Races' and 'Imperial Subjects': Violence and Governance in Colonial India, 1857-1914", *European Review of History: Revue Européenne D'histoire*, 13, 1 (2006), 1-20.

activity.

Indians were however distinct from some other marginal British groups in China in that official interest in them was not limited to their status as a problem population. 'Good Sikhs' (and 'Sikh' was often used as a shorthand for all 'martial' Indians) were often viewed as a resource which, with careful handling, could give British interests a special advantage and could bolster British prestige in China, especially in Shanghai. Precisely because of their supposed qualities based on racialised thinking, 'martial' Indians could be both a resource and a threat in the eyes of British officials in China, and for that reason they were subjected to more intense measures of control and supervision than any other category of British subjects in China.

The migration of British Indians to China and elsewhere was largely made possible by webs of connections which existed across British imperial spaces, and this migration in turn further expanded and complicated such webs. These facts have been addressed more generally in earlier historical work on India.⁴ Historians of China have also given some attention to this process: Robert Bickers argues for the inclusion of Indian influences into any consideration of British expansion in China, and Isabella Jackson's discussion of Indians in the SMP places British Indians in a framework of 'subempire' developed by Thomas Metcalf in his important work on India as a focal point in an interconnected imperial web.⁵ Metcalf's book gives a good account of some aspects of official treatment of Indians, especially those recruited for police forces in China and elsewhere, within the overall framework of Indian 'subempire'. However, the existing literature on India and China includes

⁴ Tony Ballantyne can be credited with contributing the concept of the web to imperial historiography. See his *Orientalism and Race: Aryanism in the British Empire* (New York, 2002). See also Thomas R. Metcalf, *Imperial Connections: India in the Indian Ocean Arena, 1860-1920* (Berkeley, 2008).

⁵ Robert Bickers, 'Britain and China, and India, 1830s-1947', in Robert Bickers, and Jonathan J. Howlett (eds.), *Britain and China, 1840-1970: Empire, Finance and War* (Abingdon, Oxon: Routledge, 2016), 58-83; Isabella Jackson, 'The Raj on Nanjing Road: Sikh Policemen in Treaty-Port Shanghai', *Modern Asian Studies*, 46, 6 (2012), 1672-704. See also Madhavi Thampi, *Indians in China 1800-1949* (New Delhi, 2005); Madhavi Thampi (ed.), *India and China in the Colonial World* (New Delhi, 2005); and for a detailed study focussing on Sikh diaspora and especially revolutionary activities in Shanghai, see Cao Yin, 'Red turbans on the bund: Sikh migrants, policemen, and revolutionaries in Shanghai, 1885-1945, (National University of Singapore, PhD thesis, 2016).

mostly quite general discussion of connections which existed and offers little detail as to how exactly those connections influenced specific aspects of the British presence in China. Jackson argues for the significance of 'the impact of sub-imperialism on the Shanghai Municipal Police', which seems to hint at the exercise of power from India in some way, but it is not made clear whether Indian Government decisions had much direct impact on Shanghai, or whether this impact was more indirect, the result of the British in Shanghai drawing on Indian colonial knowledge and practices.⁶ In this chapter, one of my aims is to understand with more precision how India and Indians, in the context of a 'networked' empire, affected the British presence in China through Indian migration and the deployment of Indian manpower there. I ask what kind of colonial authority was constituted in Shanghai to deal with 'martial' Indians, and I argue that although there was a clear flow of men and ideas from India, this did not lead to a significant incursion into treaty port China by the Government of India.

A key component of this chapter is an examination of the way that officials adapted British law and practice in China to deal with Indians in ways which were deemed appropriate to them. My aim is to analyse colonial difference in an imperial space somewhat different from those settings, such as British India or Dutch Indonesia, in which it has usually been examined.⁷ In exploring the way these migrants from India were managed, controlled and disciplined by the British state in China, I will consider the transposition of colonial difference from one imperial site (India) to another very different but in some ways fairly closely connected one (treaty port China). In the treaty ports, British courts regularly dealt with Indians, but the 'rule of colonial difference' was not inscribed in the fundamental structures of the legal system created by the British state in China, in contrast with the situation in India, where the 'European British subject' existed as a legal category with special

⁶ Jackson, 'The Raj on Nanjing Road: Sikh Policemen in Treaty-Port Shanghai', p. 1694.

⁷ There is a huge literature which could be listed under this topic in relation to India. See for example, Partha Chatterjee, *The Black Hole of Empire: History of a Global Practice of Power* (Princeton, N.J., 2012); Thomas R. Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1995); Elizabeth Kolsky, 'Codification and the Rule of Colonial Difference: Criminal Procedure in British India', *Law and History Review*, 23, 3 (2005), 631–83. For Indonesia, see Ann Laura Stoler's work, including 'Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion in Colonial Southeast Asia', in Cooper and Stoler, (eds.), *Tensions of Empire*, 198–237.

rights.⁸ Because the courts in China were not established under circumstances typical of colonial rule, British Indians in China used the same courts and were dealt with under the same laws as other British subjects. This chapter will argue that the politics of difference was nevertheless clearly evident in the sphere of British law and governance in China and will describe how it operated in the context of the extraterritorial legal system created under the treaties by the British state in China.

Attempts to control Indians led to an intensification of British state operations in China, and in particular to a closer cooperation with institutions such as the Shanghai Municipal Council, which was a key employer of Indians and also a body engaged in the policing and defence of Shanghai, aims which local British officials continued to support in a number of ways.⁹ By focussing on the way this relationship worked for the management of ‘martial’ Indians in China, this chapter will strengthen the argument made earlier concerning the connection between British state governance and the SMC, and will show how that relationship remained close at the beginning of the twentieth century. A consideration of the management of Indians in China therefore contributes to our understanding of the nature of the interconnections between the British state and other institutions which engaged in and assisted in the governance of British colonial subjects in China, and thus builds on the discussion of institutions and structures in chapter one, in order to clarify further the nature of colonialism in Shanghai in particular.

In this chapter I will proceed as follows. First, I will describe the Indian community in China, paying particular attention to ‘martial’ British Indians other than those serving in the Indian Army stationed in China, since the latter were not living under Britain’s civil extraterritorial jurisdiction there. Then I will focus on the development by British officials from the 1900s to the 1920s of orders, regulations and other administrative measures and structures designed

⁸ For the situation in India, see Kolsky, *Colonial Justice*, p. 73.

⁹ For a detailed study of the SMC see Jackson, *Shaping Modern Shanghai*. For policing in Shanghai (although the focus is on the 1920s and 30s), see Bickers, *Empire Made Me: An Englishman Adrift in Shanghai*.

specifically to manage and control Indians in China. In so doing I will argue that the key driver behind such measures was certain institutional relationships between the British state and other forces of governance in China, in particular the SMC, and only to a comparatively small degree the Government of India. Finally I will move on to examine in detail the way that the British courts, in particular the SCC at Shanghai, dealt with Indians who appeared before them in criminal and also civil cases, paying particular attention to the ways in which the politics of difference can be seen to have driven the attitudes and practices of officials. By drawing on individual court cases, I will be able to illustrate the ways in which officials discarded judicial norms or exceeded statutory powers when they dealt with Indian British subjects in China.¹⁰

Indians in China

This chapter is focussed on official attitudes and practices in relation to Indian men who came to China from the north-west of the Indian subcontinent, especially the Punjab, and who often worked as police or watchmen in China. This was a category of Indian British subjects who contemporary British officials tended to group together when addressing issues connected with their governance. I refer to this group as ‘martial’ Indians, since this is a succinct term which reflects contemporary official conceptions of the group’s unifying feature, their supposed fighting prowess, without specifying their religious affiliation, which was not always clear.¹¹ The theory of martial races which informed British imperial military practices in India and elsewhere has been well documented in historical works which examine the theory as an example of race-based, essentialist thinking, which grew in significance in India and Great Britain following the Rebellion of 1857.¹² Martial race theory was widely promoted and justified in contemporary political, military and ethnological works on India.¹³ In accordance with this

¹⁰ The use of law reports is an undertaking advocated by Mitra Sharafi in her *Law and Identity in Colonial South Asia: Parsi Legal Culture, 1772–1947* (Cambridge, 2014), p. 10.

¹¹ Nor was religion always a very stable category. For a useful discussion of Sikh identity in British India, including a discussion of the British concept of religion as it was applied in India, see Tony Ballantyne, *Between Colonialism and Diaspora: Sikh Cultural Formations in an Imperial World* (Durham, N.C., 2006), pp. 41–44.

¹² Streets, *Martial Races* (Manchester, 2004).

¹³ For example: P.D. Bonarjee, *A Handbook of the Fighting Races of India* (Calcutta, 1899); A.E. Barstow, *Handbooks for the Indian Army: Sikhs* (Calcutta, 1928); George Fletcher MacMunn, *The Martial Races of India* (London, 1933).

widely-espoused theory, British officials in China saw this category of men as having in common a particular essential nature which made them suitable for work related to combat, security and policing.¹⁴

Men falling into the category of 'martial' Indians, although believed to share important attributes, were not viewed as entirely homogeneous; officials in China often differentiated between subcategories, for example, Sikh, Punjabi Muslim and Pathan. There were thought to be two principal 'types' of Sikh, Majha and Malwa, determined by their place of origin.¹⁵ Sikhs were undoubtedly the largest group of 'martial' Indians in China, and sometimes measures were adopted by officials with Sikhs and Sikh ideas and practices specifically in mind, as will become clear later when I discuss the court and the Shanghai gurdwaras. However, most confusingly, sometimes the label Sikh was used to refer to 'martial' Indians generally, including Muslims from the Punjab or North-west Frontier provinces, a situation which sometimes caused confusion between British officials.¹⁶ The situation is further complicated by the suggestion that some Indians claimed to be Sikhs in order to enhance their employment prospects, what Ballantyne terms the 'pragmatic embrace of Sikhism'.¹⁷ It seems that British recruitment officers in India also created Sikhs when recruitment from existing followers of Sikhism proved difficult.¹⁸ For the sake of clarity, in this chapter I will only refer to Sikhs when men who were considered to be followers of Sikhism are clearly at issue.

There were also Parsis and Sindhis from India in China, most of whom were merchants or shopkeepers, but there were clear differences in the way these

¹⁴ The history of 'martial races' played an important part in British evaluations of their suitability for combat-related work. See Gavin Rand, "'Martial Races' and 'Imperial Subjects': Violence and Governance in Colonial India, 1857-1914", *European Review of History: Revue Européenne D'histoire*, 13, 1 (2006), 1-20, pp. 11-12.

¹⁵ TNA FO 228/2299: table enclosed in HK Governor to Jordan, 22 December 1915. For more on the supposed distinction between the Sikh sub-groups, see Ballantyne, *Between Colonialism and Diaspora*, p. 75.

¹⁶ TNA FO 17/1765: HK to CO 9 Dec 1902 - 'I would first ask whether the term "Sikh" as used by the Foreign Office might possibly be intended in its generic sense as comprising all Indians and not with reference to the special caste known as Sikhs.' Metcalf, *Imperial Connections*, (p. 127) states that in Southeast Asia all Indians from the interior of the subcontinent might be called Sikhs.

¹⁷ Tony Ballantyne, *Between Colonialism and Diaspora: Sikh Cultural Formations in an Imperial World* (London, 2006), p. 67; reports were also made of this phenomenon occurring in China, for example 'Indians in North China', *The Times of India*, 27 April 1906, p. 4.

¹⁸ Streets, *Martial Races*, p. 9.

groups were viewed – for one, they were not ascribed martial proclivities – and although Parsis and Sindhis made use of British courts, for example to resolve civil disputes, they had far less interaction with the British authorities.¹⁹ Moreover, they were not on the whole viewed as problem populations, since they generally worked alongside mainstream British trade in ways neither challenging to metropolitan and colonial British interests, nor controversial in terms of relations with the Chinese or other governments. Attitudes towards British Jews, many originally from Baghdad but often British subjects or protégés through a connection with India, can be characterised in much the same way.²⁰ Finally, aside from ‘martial’ Indians and merchants, a third group of Indians who were present at the treaty ports, was ‘lascars’, who were often Bengalis employed as seamen on ships trading to and from India.²¹ However, these men rarely seem to have stayed at the ports for extended periods and provoked very little official response in the form of exceptional measures to address them as a population. Their discipline was to a large extent provided for through ship-based systems of control, and while they appeared quite often in the British courts charged with various crimes, they were usually dealt with swiftly and without controversy.

The growth of ‘martial’ Indian communities on the China coast appears to have been closely connected to the deployment of Indian soldiers by Britain in China from the first Opium War onwards. Britain made use of Indian forces in China in every significant subsequent British military intervention.²² Some of these men left the military and found other employment in China. For example, Indian soldiers garrisoned in Hong Kong were recruited for police duties there from the 1840s: probably one of the earliest cases of the use of Indians as police outside

¹⁹ Claude Markovits provides a good overview of the diverse Indian populations in China, see Claude Markovits, ‘Indian Communities in China, c. 1842-1949’, in Robert Bickers and Christian Henriot (eds.), *New Frontiers: Imperialism's New Communities in East Asia, 1842-1953* (Manchester, 2000), pp. 55–74. For a more detailed study of Indian Merchants in China (and elsewhere), see Claude Markovits, *The Global World of Indian Merchants, 1750–1947: Traders of Sind from Bukhara to Panama* (Cambridge, 2004).

²⁰ For Jews, see Chiara Betta, ‘Marginal Westerners in Shanghai: The Baghdadi Jewish Community, 1845-1932’, in Bickers and Henriot (eds.), *New Frontiers*, pp. 38–54.

²¹ For a history of lascars and their role in maritime trade see Aaron Jaffer, *Lascars and Indian Ocean Seafaring, 1780-1860: Shipboard Life, Unrest and Mutiny* (Woodbridge, 2015).

²² Madhavi Thampi, ‘The Indian Community in China and Sino-Indian Relations’, in Madhavi Thampi (ed.), *India and China in the Colonial World* (New Delhi, 2005), 66–82, p. 73.

India by a British authority.²³ A British regiment of Indian soldiers was based in Shanghai from 1860 to 1864, and although no Indians were recruited for police work in Shanghai or other foreign settlements or concessions in mainland China before the 1880s, British Indians were working as watchmen in Shanghai from at least the late 1860s.²⁴ It seems likely that these men were ex-soldiers from British regiments in Hong Kong or China. The migration of Indians to China was therefore probably triggered by the deployment of Indian troops in Hong Kong and on the mainland, but it is clear that many men found their own way to China, having neither served in the military nor been recruited in India for police or other service in China.

Recruitment of Indians for the Shanghai Municipal Police began in 1884. Six men were recruited locally; it was said that 'no desirable Sikhs can be got from Hongkong [sic] at present,' but recruiting was soon being done at Hong Kong (later in the same year), and in the Punjab from 1885.²⁵ Shanghai was always the main centre of Indian settlement on the Chinese mainland, and the SMP the single largest civilian employer. The population of non-military Indians at Shanghai, and presumably therefore also other parts of China, grew only fairly slowly until the turn of the century, when the numbers began to grow more rapidly, rising from 119 in 1895 to 568 in 1905 (see table 3). It seems likely that the deployment of large numbers of Indian troops in China in response to the Boxer uprising (1900-02) will have played a part in the increase. The unrest caused by the Boxer crisis also probably increased the demand for watchmen, which may have drawn Indians to work in the treaty ports.²⁶ Another possible influence on migration at this time is famine in India – the Punjab was badly affected by famines in 1896-7 and 1899-

²³ Lawrence K.K. Ho, Chu Yiu Kong, *Policing Hong Kong, 1842-1969 – Insiders' Stories* (Hong Kong, 2012), p. 10; James William Norton-Kyshe, *History of the Laws and Courts of Hongkong*, Vol. 1 (London, 1898).

²⁴ Indian regiment in Shanghai - 'Mr. Holliday on the New Police Scheme', *NCH*, 14 Mar 1883 p. 303; Indian watchmen – *NCH*, 5 January 1869, p. 9; *NCH*, 22 April 1869, p. 208; *NCH*, 26 June 1869.

²⁵ *NCH*, 12 September 1884, p. 304; *Minutes of SMC*, vol. 8, meeting of 22 September 1884, p. 194; *Minutes of SMC*, vol. 8, meeting of 15 June 1885, p. 267.

²⁶ A similar effect was noted following the upheaval of the 1911 Xinhai Revolution – TNA FO 228/2299: memo by Barrett, 2 December 1912, enclosed in Fraser to Jordan, 27 December 1912.

1900.²⁷ In 1906 the SMP resolved to recruit many more Indians as policemen in response to riots in 1905 which prompted doubts as to the advisability of relying on Chinese for riot control, and extra recruits were obtained from India from 1907 onwards, reinforcing the existing trend for growth in numbers.²⁸

Table 3. The Indian population of Shanghai 1880-1925

Year	Number of Indians in Shanghai	Number of Indians employed by SMP
1880	4	nil
1885	58	16*
1890	89	49**
1895	119	69
1900	296	159
1905	568	224***
1910	804	392
1915	1009	564
1920	954	513
1925	1154	772****

Source: SMC, *Annual Reports*, 1895-1930, except:

* Figure is for 1884 from 'Memorandum from the Bubbling Well Road Committee', *NCH*, 11 February 1885, p. 162.

** Bickers, 'Ordering Shanghai: policing a treaty port, 1854-1900', p. 182.

*** The Ratepayers' Meeting', *NCH*, 16 March 1906, p. 594.

**** 'Municipal Gazette News', *NCH*, 28 November 1925, p. 388.

A typical individual trajectory was described by Amar Singh in 1917, when he was fighting against deportation in court proceedings. He left India with the British Army in 1900 and served in Tianjin. He returned to India in 1901 but then travelled to Shanghai in 1903, and found work as a watchman in Shanghai and later with the Shanghai-Nanking [Nanjing] Railway.²⁹ Indians like Amar Singh were highly mobile, moving both within China between different locations and

²⁷ Mike Davis, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World*, (London, 2001). See especially pp. 141-62 and p. 175.

²⁸ SMC *Annual Report for 1907*, p. 13.

²⁹ TNA FO 228/2705: affidavit of Amar Singh, enclosed in de Sausmarez to Alston, 9 July 1917.

employers, and also along imperial and other networks connecting India, Singapore, Australia, the United States and many other places. Although recruitment for the SMP and other employers sometimes took place in India, in the case of the SMP often with official assistance from the Government of India, Indian migration to China established networks linking British India and China that were not wholly created by British state institutions or by commercial élites. Indeed, it was arguably Indians who played the greatest part in creating these linkages through their choice to seek employment outside India.

The number of Indians in the 'Sikh Branch' of the SMP is shown in Table 3, from which it can be seen that the proportion of the total recorded Indian population of Shanghai employed by the SMP was generally around 40-50%. Table 4 shows the geographic distribution in 1915 of Indians in China, from which it is clear that 'martial' Indians (categorised as Sikhs, Punjabi Muslims and Pathans) made up the majority of the Indians known to be in China, and it is also apparent that following Shanghai, the cities of Hankou, Tianjin and Xiamen, where Indians were also employed in municipal police forces, were the other major centres of population of 'martial' Indians.³⁰ Indians classified as Sikhs always made up the majority of Indians in China. In Shanghai, all the policemen were said to be Sikhs, but the SMC also employed a number of Muslim Indians, particularly as gaol warders.³¹ The total number of Indians in China in 1915, according to the data in Table 4, was 1,755, but it should be noted that in the correspondence with which this table was sent, it was pointed out that this was likely to be lower than the true figure.³² Indeed all the numbers in each of these tables, other than those which refer to police forces, are likely to be underestimates, since many Indians, like other marginal British subjects, did not register with consuls and may have been overlooked in municipal censuses.

³⁰ Other treaty ports where Indians were employed as police included Xiamen and Zhenjiang (until the late 1880s). Xiamen – TNA FO 228/3413, Tours to Clive, 12 December 1922; Zhenjiang – *NCH*, 22 February 1889, pp. 205-6.

³¹ For example, in 1912 there were reported to be 38 Muslim gaol warders – TNA FO 228/2299: memo by E M Barrett, 2 December 1912, enclosed in Fraser to Jordan, 27 December 1912.

³² TNA FO 228/2299: enclosure in Hong Kong Governor to Jordan, 22 December 1915 – in which it was also stated that 'probably there is a considerable number of unregistered Indians in China.'

Table 4. Indians in China in 1915

Places	SIKHS			PUNJABI MUSLIMS & PATHANS			HINDUS (MOSTLY SINDIS)		PARSIS	BOMBAY MUSLIMS
	Watchmen	Misc.	Police	Watchmen	Misc.	Police	Shop-keepers	Misc.	Merchants etc.	Merchants etc.
Guangzhou (Shamian)	25	-	-	6	-	-	-	-	-	-
Shantou	3	-	-	3	-	-	-	-	-	-
Fuzhou	-	-	-	8	-	-	-	-	5	1
Xiamen	8	-	21	6	-	10	1	-	-	-
Hankou	97	-	55	23	-	8	3	-	-	13
Zhenjiang	5	-	-	-	-	-	-	-	-	-
Wuhu	2	-	-	-	-	-	-	-	-	-
Nanjing	44	-	-	1	-	-	-	-	-	-
Niuzhuang	3	-	-	-	-	-	-	-	1	-
Yichang	-	-	-	-	-	-	-	-	-	1
Tianjin	62	-	31	4	2	1	-	-	9	7
Kunming	-	-	-	-	1	-	-	-	-	-
Ha'erbin	-	-	-	6	-	-	-	-	-	-
Changsha	4	-	-	-	-	-	-	-	-	-
Chengdu	-	-	-	-	-	-	-	-	1	-
Tengyue	-	-	-	-	-	-	-	3	-	-
Shanghai	404	64	564*	124	32	-	24	-	31	9
TOTAL	657	64	671	181	35	19	28	3	47	49

*This figure for Indians in the SMP is from the SMC *Annual Report* for 1915.

All other figures are from TNA FO 228/2299, enclosure in Hong Kong Governor to Jordan, 22 December 1915.

Most 'martial' Indian migrants to China came from villages in rural parts of northern India, where it has been pointed out that there was a long-standing tradition of men from farming families entering military service.³³ Jackson states that Indians in the SMP were 'almost without exception ex-Sepoy from rural families'.³⁴ While this was undoubtedly the SMC's ideal type of recruit, there is however evidence that a considerable proportion of the men who worked in China had never served in the Indian military, as was also the case in some forces in Malaya, as Metcalf points out.³⁵ In 1903, the Secretary of the SMC reported that of the 181 Indian police currently working in the SMP, ninety-nine had served in the Indian army, meaning that a little over forty-five per cent had not.³⁶ It seems that the reputation of their 'martial' attributes was enough, if suitable men with actual military experience could not be found.

Some details of the material and social living conditions of Indians in Shanghai can be gleaned from newspaper reports of court cases and inquests. When unemployed Sundra Singh died of an opium overdose in 1905, the inquest went into some detail as to his living quarters in the city: he shared a room with five other Indians, three watchmen and two others who were unemployed. It appears that there were not, however, six beds in the room, as one of the men explained that he slept on the floor.³⁷ Many watchmen lived in one-room 'huts' at their places of work. Lists of belongings of deceased Indians in consular reports reveal that many left little cash and had few possessions.³⁸ Indians also lived in rooms in shared houses where other members of Shanghai's urban poor lived, including Chinese. In 1915 a case of plague was reported in the Shanghai International Settlement in what appears to have been a three-room house, roughly partitioned into smaller spaces, which was occupied by seventeen persons, including an Indian

³³ Madhavi Thampi, *Indians in China 1800-1949*, pp. 73-5.

³⁴ Jackson, 'The Raj on Nanjing Road', p. 1680.

³⁵ Metcalf, *Imperial Connections*, p. 112.

³⁶ TNA FO17/1765: Memo by J. O. P. Bland dated 31 August 1903 enclosed in Mansfield to Satow, 2 September 1903.

³⁷ 'Re the Death of Sundra Singh', *NCH*, 27 October 1905, p. 217.

³⁸ Bickers, 'Britain and China, and India', p. 70.

watchman.³⁹ Indians in the SMP were mostly housed in military-style barracks, often above the police stations they were attached to.⁴⁰

To understand the marginality of 'martial' Indians, it is important to recognise the linguistic isolation in which most Indians in China lived, including those employed in police forces.⁴¹ It seems that few police or watchmen spoke English or Chinese to any level of fluency, and thus most could only communicate on a deeper level with other Indians. This affected their relations with Chinese, their opportunities in China for work, and it also affected their relationship with the British state and its agents. Relations with the Chinese were notoriously bad. This cannot have been helped by the linguistic divide, which meant that Indian policemen often communicated through actions – often violent – rather than words, with the Chinese, such as rickshaw pullers, who crossed their paths. British officials and employers relied to a large extent on a small number of men with some linguistic abilities to communicate with the majority of Indians. In Hankou in 1914, when sedition was a particular concern to the British consul there, he informed Minister John Jordan that 'the Municipal Council's two Scotch inspectors have no previous experience of Indians, and, of course, no knowledge of the language, so are entirely dependent on a not very reliable sergeant-major.'⁴² European Britons were at once in close and regular contact with Indians but also cut off from them, because communication of a more complex kind was impossible between most Europeans and most Indians. This language gap may have contributed to the chauvinistic tendency to describe Indians as childlike and lacking intelligence. It meant that a great deal of emphasis was placed by the British on obtaining suitable European and Indian staff in leadership roles who could speak both English and Punjabi, but this aim was often unachieved, and the absence of British officers with adequate language skills in the SMP was blamed by Indians themselves for disaffection and insubordination in 1910.⁴³ The language barrier also had repercussions for the treatment of Indians in legal cases, as will be discussed below.

³⁹ SMC *Annual Report for 1915*, p. 79A.

⁴⁰ Jackson, 'The Raj on Nanjing Road', p. 1680.

⁴¹ A feature of Indian migrant life in many parts of the empire – see Metcalf, *Imperial Connections*, p. 108.

⁴² TNA FO 228/2299: Fox to Jordan, 20 November 1914.

⁴³ *Minutes of the SMC*, vol. 17, meeting of 17 August 1910, p. 459.

Despite their centrality to British security and prestige in the treaty ports, the lived experience of most 'martial' Indians in China was one of multifaceted and extreme marginality from both other foreigners and Chinese residents. To British élites, the linguistic aspect of this marginality was not always viewed as a disadvantage, because a reason that Indians were valued in policing and as watchmen was the distance they tended to maintain from Chinese residents. In addition, inability to speak English was not seen to be the problem one might think it would be, since there was never any desire to give Indians work which required subtlety or intelligence – they were wanted primarily for their physical abilities and resilience. However, the marginal and inward-facing nature of Indian communities in China presented difficulties in the exercise of governance. Without channels for obtaining intelligence and communicating effectively, British élites struggled to control 'martial' Indians, and their fears around this issue were frequently expressed in official correspondence. The SMC attempted to resolve part of this problem in the case of Sikhs, the backbone of their security force, through the gurdwaras, which they attempted to maintain influence over as a tool in their repertoire of control. As I will show later, the British state also co-opted the gurdwaras into official systems of governance over Sikhs, through practices of the courts, which made the gurdwara into an alternative forum for dispute resolution. In addition, the British state adopted specific regulatory measures to enable a closer control over 'martial' Indians in China.

Policies and regulations to deal with 'martial' Indians

British officials generally acted specifically to control 'martial' Indians as a group in four sets of circumstances: to restrict the locations such Indians would travel to in China; to control by whom they would be employed; to discipline and control those Indians employed in British or British-dominated concessions or settlements, especially those in police forces; and to counter 'seditious' Indian nationalism and anti-British movements. As they began to do so, they were working through a system of governance created in the 1840s with the purpose of allowing British merchants to trade with China more freely and conveniently, and which had been

revised in the 1860s to deal with the crime and violence of the largely European problem population described in chapter two, but which was not an apparatus designed to deal with large numbers of colonial subjects moving through the treaty ports and their hinterlands or taking up residence in them. In India, as elsewhere, the British attempted to effect control through a combination of 'native' tradition and colonial law, and in particular from 1860 through the Indian Penal Code, which gave the government wide and draconian powers to discipline its Indian subjects.⁴⁴ The movement of 'martial' Indians from India to the treaty ports, under British consular jurisdiction, was seen as problematic by the chief judge in China, Havilland de Sausmarez, in 1910:

All these men are removed from the restraints which life in their own community imposes on them, and the organization of extraterritorial jurisdiction is ill fitted to deal with so numerous a body of this nature.⁴⁵

In this section I will consider how this question was addressed through alterations to, and adaptation of, the existing institutional apparatus, with the aim of controlling 'martial' Indians in China, and show the factors which influenced policy and practice in this area.

Between 1906 and 1917, a series of OICs and king's regulations were made which were designed specifically to deal with the governance of Indians in China. A large factor in most of these modifications to the British regulatory regime was the influence of issues arising out of the International Settlement of Shanghai and the SMC's use of Indians as a core of its policing and defence force. The first measure to be enacted was the king's regulation entitled 'Peace order and good government of His Majesty's subjects serving the Shanghai Municipal Police' issued in 1906 by Minister John Jordan in response to the refusal of duty of a large proportion of the Indians serving in the 'Sikh branch' of the SMP.⁴⁶ The men had refused duty as the culmination of a set of events over a number of months. The SMC had refused to allow men to resign who it was discovered were moving away, often to America, to seek better pay.

⁴⁴ Jon E. Wilson, *India Conquered: Britain's Raj and the Chaos of Empire* (London, 2016). See in particular chapter 10.

⁴⁵ *NCH*, 'Municipal Gazette', 1 April 1910, p. 142.

⁴⁶ *SMC Annual Report for 1907*, p. 37.

From the late nineteenth century, large numbers of Indians from the Punjab travelled as independent – that is, not indentured – migrants to locations across the British empire and beyond, and to settler colonies and North America in particular. It was such migrants who travelled to and through the Chinese treaty ports in increasing numbers.⁴⁷ British and other state authorities in China and elsewhere reacted in various ways, including in some cases attempting to restrict the flow of migrants. This occurred most famously in 1914 in the case of the *Komagata Maru*, a ship chartered in the face of such restrictions to take Indian migrants to Canada, where it was refused permission to disembark its passengers.⁴⁸ The development of Indian revolutionary politics was strongly influenced by the experiences of Indian migrants outside India and by the perceived injustice of this restrictive response to migration. A particular development was the genesis of the secularist pro-independence organisation known as the Ghadar Party. This group was founded in California in 1913 by Indians there whose reactions to the ideas and practices they encountered fed into their activism aimed at terminating British rule over India.⁴⁹ The considerable mobility of Indians, especially Sikhs from the Punjab, would help to spread Ghadar ideas and organisational structures across the British Empire and also to Indians in China and Japan. When the Government of India suppressed an attempted rebellion by Ghadar supporters centred on Lahore in 1915, it was discovered that several of the alleged participants were former residents of Shanghai, and some were former employees of the SMP.⁵⁰

In 1906, once the SMP refused to accept the resignations of those Indians who wished to move on in search of better opportunities, Indian policemen tried to procure their dismissal in various ways, but instead of dismissing them the SMP disciplined them through fines. The men then asked for an increase in pay, and

⁴⁷ For a summary of Indian migration from the nineteenth century onwards, see Ballantyne, *Between Colonialism and Diaspora*, chapter 2.

⁴⁸ Hugh J.M. Johnston, *The Voyage of the Komagata Maru: The Sikh Challenge to Canada's Colour Bar* (Vancouver, 2014).

⁴⁹ Seema Sohi, *Echoes of Mutiny: Race, Surveillance, and Indian Anticolonialism in North America* (Oxford, 2014).

⁵⁰ SMC, *Annual Report for 1915*, p. 24A; 'Lahore Conspiracy Case, *The Times of India*, 4 November 1915, p. 8.

had a petition calling for an increase drawn up by a British lawyer. The SMC refused the request and on 30 September 1906, 103 out of 172 men decided to strike.⁵¹ The strikers' leaders were escorted by a squad of British bluejackets to the British court, where the men were persuaded to return to work by Judge Havilland de Sausmarez.⁵² The new king's regulation was issued within weeks of the strike, as an urgent regulation, meaning the FO were not consulted before it came into force. Although the regulation applied to any members of the SMP who were British subjects, it was openly declared in the preamble to the Regulation that it was designed to address the problem of Indians refusing duty.⁵³ The Regulation made it an offence punishable by the court to disobey superior officers, to desert the service of the SMP, and to persuade or procure another to desert.⁵⁴ In December 1906, ten men were deported to India, having been identified as 'ringleaders' of the refusal of duty.⁵⁵ The same disciplinary powers over police were extended in 1907 to police forces in British concessions, following a request from the Hankou Municipal Council.⁵⁶

In 1906, at around the same time as the strike occurred, British officials had already been planning various measures to assist the SMP in the disciplinary problems caused by Indians who wished to leave their employment. The acting crown advocate had in 1906 drafted a regulation intended to prevent breach of contract by existing members of the force, in response to the events in the months leading up to the strike described above.⁵⁷ In addition, in the course of negotiations between the SMC, the Indian government and British officials in China and London over recruitment of 1000 additional men for the SMP from India, the Indian government had raised the question of discipline, fearing repercussions for military discipline in the Indian Army if a suitable regime was not put in place.⁵⁸

⁵¹ SMC, *Annual Report for 1906*, p. 41; TNA FO 656/106, De Sausmarez to Jordan, 2 October 1906.

⁵² TNA FO 656/106, de Sausmarez to Jordan, 2 October 1906.

⁵³ TNA FO 656/83: Jordan to de Sausmarez, 12 October 1906.

⁵⁴ 'Regulation for the Shanghai Municipal Police', 12 October 1906, *HChT*, vol. 2, 1908, pp. 1080-1.

⁵⁵ SMC Report for 1906, p. 42.

⁵⁶ TNA FO 656/83: Fraser to Jordan, 21 November 1906 enclosed in Jordan to de Sausmarez, 4 December 1906; 'Regulations respecting maintenance of discipline in the police forces of British concessions', 14 June 1907, in *HChT*, vol. 2, p. 1105.

⁵⁷ FO 656/106, De Sausmarez to Jordan, 2 October 1906.

⁵⁸ TNA FO 656/113: Jordan to Shanghai, 19 June 1907.

India favoured military discipline based on the Indian 'Articles of War' for the men under a court martial, but it was feared that this proposal revealed a misunderstanding in India of the nature of the International Settlement at Shanghai – namely that it was not British territory and that its council was constituted as an international body – and while it was accepted by the Minister Jordan and Judge de Sausmarez that greater powers of discipline would be needed given the substantial increase in men contemplated, the minister and judge insisted that discipline would need to be enforced in a way compatible with the existing judicial regime.⁵⁹

Eventually, due to doubts raised by the strike and in particular because of the concerns of Ministers Satow and Jordan (the latter took over as minister in 1906), far fewer than 1000 men were recruited. Satow's view was that 'the Municipal Council are not to be trusted with an army for defence of the Settlements against attack', and Jordan maintained the same position.⁶⁰ The number of Indians nevertheless increased substantially and accordingly, additional disciplinary powers over the force were still sought by the SMC.⁶¹ British officials agreed that they were indeed needed and the basis for these powers was provided in 1909 and 1910 by OICs, which allowed for a regime closer to military-style discipline by giving the minister the power to confer a warrant on the commander of a foreign concession or settlement police force. This warrant would enable the latter to inflict summary punishment, including imprisonment with hard labour, on members of the force.⁶² Despite the earlier doubts about the SMC's recruitment plans, the British state demonstrated its close relationship with the SMC by giving these powers to one of the Council's employees.

King's regulations under the 1909 and 1910 OICs, providing the power of the commander of a police force to inflict summary punishment, were only ever

⁵⁹ Indian misunderstanding - FO 371/28 Jordan to FO, 17 September 1906; need for disciplinary powers - FO 656/106, De Sausmarez to Jordan, 2 October 1906.

⁶⁰ TNA FO 371/28 Satow to FO to Pelham Warren, 20 April 1906; Jordan to FO, 17 September 1906.

⁶¹ *Minutes of the SMC*, vol. 16, 18 December 1907, p. 545.

⁶² TNA FO 371/28: de Sausmarez to Jordan 28 September 1906; OICs - W.B. Kennett, *British Jurisdiction in China. Orders in Council, 1904-1915* (Shanghai, 1916). pp. 89-90 and 91-2.

issued in favour of the SMP. Other municipal councils employing Indians, such as Hankou, Tianjin and Xiamen, made do without such powers. Judge de Sausmarez drafted the regulations and warrant, which gave the captain superintendent of the SMP Clarence Bruce the right to fine British members of the force, and to inflict other disciplinary measures, including imprisonment, without needing to apply to the courts. In a letter to the Council accompanying the regulations, which was published in the *Municipal Gazette*, it was made clear that the measures were above all designed to allow the SMP's commander to control Indians in Shanghai, and that the SMC had been fully consulted on its requirements, since 'all the amendments desired by the Council have been inserted.'⁶³ When de Sausmarez reported to Jordan he explained that he had however been careful to ensure the 'proper subordination' of the captain superintendent to the court.⁶⁴

The outbreak of war in 1914 led to heightened concerns over the loyalty of Indians, and so further regulations were created, again triggered by the situation in Shanghai and also, at least to some extent, the SMC's requirements. These were regulations which would make it illegal to work in enemy employment, and although no mention of it appeared in the text of the regulations which were issued, the regulations were aimed specifically at Indians in Shanghai working for German firms. In August 1915, Fraser wrote to Jordan stating that there were 'a great many Indians still in enemy employ but practically no other British subjects.' Fraser reported that together with SMP Assistant Superintendent Edward I. M. Barrett and leading figures in the gurdwara, he was trying to ensure that the men were registered and were watched.⁶⁵ He called for British subjects to be barred by law from employment by the enemy, ending his letter in dramatic fashion (it is clear from Fraser's considerable wartime correspondence that he was excited by the dramas of the war): 'the danger of murderous assault and the like is not imaginary for the enemy are free with money and budmashes are not

⁶³ *Municipal Gazette* (supplement to *North China Herald*), 31 March 1910, p. 142.

⁶⁴ FO 656/121: de Sausmarez to Jordan, 5 November 1909.

⁶⁵ Edward Ivo Medhurst Barrett was recruited in 1907 to the SMP specifically to lead the Sikh Branch of the force, on the strength of previous experience in the Malay State Guides, a military force which also depended on 'martial' Indians. SMC, *Report for 1907*, p. 229.

scrupulous.’⁶⁶ In 1916, Fraser wrote to Jordan again following receipt of a letter containing intelligence, collected by Barrett, which contained a list of Indians in German employment, and explaining that the majority were ‘known seditionists’. Fraser strengthened his argument by saying that ‘Captain Barrett’s representation is in my opinion well-founded in that loyal Indians must wonder at our letting disloyal Indians enjoy well-paid employment without interference’.⁶⁷ Jordan was persuaded that regulations should be issued and they were drafted by the crown advocate and issued as urgent king’s regulations.⁶⁸

Although state officials in general worked closely together and in collaboration with the SMC, there were differences over the best approach. Havilland de Sausmarez was judge of the SCC at Shanghai from 1905 to 1921, a crucial period for British governance of Indians in China, when major regulatory changes were effected, and also a time when a great deal of activity by Indians provoked British officials into action, particularly during the 1914-18 war. During this time, although he often acted to assist the SMC in exercising control over Indians in Shanghai, de Sausmarez repeatedly asserted the independence of the judiciary in the face of calls for more executive powers to be given to officials to deport Indians under suspicion of anti-British activities or other disruptive behaviour. De Sausmarez took a different approach to Shanghai Consul-General Everard Fraser, who in 1915 called for deportation to be made possible ‘in all cases of proved disloyalty in speech, writing or act during the period of the War’, and even proposed to take ‘executive action’ against Tehl Singh, thought to be the Ghadar leader in Shanghai, by effectively kidnapping him with the assistance of the SMP and placing him on a British ship bound for Singapore.⁶⁹ Fraser claimed that it would not be possible to deport him through the existing procedure, but de Sausmarez did not agree and nor did Jordan, and indeed Tehl Singh was shortly

⁶⁶ TNA FO 228/2299: Fraser to Jordan, 17 August 1915; for more on Fraser’s wartime role, see Robert A. Bickers, *Getting Stuck in For Shanghai: Putting the Kibosh on the Kaiser from the Bund: The British at Shanghai and the Great War* (London, 2014); note Fraser’s use of the Anglo-Indian term *budmash*, more usually rendered as *badmash*, ‘a hooligan, bad character, hoodlum’, as defined in H.W Wagenaar, Parikh, S.S., Plukker, D.F., and van Zanten, R. V, *Allied Chambers Transliterated Hindi-Hindi-English Dictionary* (New Delhi, 1993), p. 66.

⁶⁷ TNA FO 228/2702: Fraser to Jordan, 28 March 1916.

⁶⁸ TNA FO 228/2702: Jordan to Fraser, 8 May 1916; Jordan to FO, 5 June 1916.

⁶⁹ TNA FO 228/2299: telegram from Fraser to Jordan, 29 October 1915.

afterwards deported by de Sausmarez under the existing rules.⁷⁰ Referring to Fraser's calls that deportation should be made easier, de Sausmarez expressed his concerns about the new powers being sought, and argued that the proposals were 'opposed to the first principles of English law'. He went on to bring into the open the dilemma of enacting a politics of difference within the constraints of British law in China: 'the very doubtful alternative of the exclusion of Europeans from their action, is an assertion, that an Indian subject of His Majesty is not entitled to the protection granted by Magna Charter to an Englishman.'⁷¹ British officials in China usually avoided overt expressions of colonial difference in laws or regulations, preferring to resolve the contradiction between the supposed equality of all British subjects, and the everyday fact of the subordination of certain groups, through practices such as are described in connection with the courts in the next section. Despite de Sausmarez's opposition, in the face of mounting pressure to allow more decisive action to be taken against seditious Indians during the war, Jordan was eventually persuaded to support additional deportation powers, but these were framed to apply to all British subjects, and were implemented through the China (War Powers) Order in Council of 1917.⁷²

A good deal of the pressure for greater powers came from a new official voice in Shanghai, David Petrie, an officer from the Indian Police who was sent to Shanghai to coordinate activities against suspected Indian nationalists in East and Southeast Asia in 1916. Before the arrival of Petrie, there is little evidence of the deliberate transfer of personnel, guidance or regulatory models directly from India in connection with the management by the British state of Indians in China.⁷³ The British apparatus of governance in China was not much shaped by direct official Indian involvement, except perhaps in the realm of intelligence, and then only from the arrival of Petrie in Shanghai. In 1894, the India Office showed a reluctance for Indian personnel to become involved in Shanghai affairs when it

⁷⁰ TNA FO 228/2299: telegram from de Sausmarez to Jordan, 4 November 1915; telegram from Fraser to Jordan, 28 December 1915.

⁷¹ TNA FO 228/2702, de Sausmarez to Jordan, 23 September 1916.

⁷² *BaFSP*, vol. 111, 1917-1918, pp. 20-1.

⁷³ Cao Yin argues that the SMC modeled its management of Indian police on Hong Kong: Cao Yin, 'The Journey of Isser Singh: A Global Microhistory of a Sikh Policeman', *Journal of Punjab Studies*, 21, 2 (2014), 325-54.

recommended permission be refused for an Indian Army officer to be allowed to take a position serving the SMC, since it would mean his position, 'outside the control both of the Indian and British Governments, would be altogether anomalous and inconvenient.'⁷⁴ It is true that India made a substantial annual contribution to the funding of the British consular service in China, but this payment was paid less than willingly and seems not to have brought with it much power to influence actions in China, if indeed such influence was even sought by the Indian government.⁷⁵ On the whole it appears that there was generally no great enthusiasm for involvement in treaty port affairs on the part of the Government of India.

Petrie's appointment in late 1915 came after two events which served to highlight to British officials in China and India the potential threat posed by Indians living and moving through East and Southeast Asia: the trials at Lahore following the Ghadar rebellion in India referred to above, which involved Indians from Shanghai and elsewhere; and a rebellion at Singapore triggered by Ghadarite activists, which resulted in a mutiny by a Singapore-based Indian army regiment in which dozens of Britons were killed.⁷⁶ Petrie was tasked with organising intelligence activities throughout all of East and Southeast Asia, not just China, and had originally planned to have his base at Singapore. He chose Shanghai following his initial tour of the region, and with the support of the ministers at Beijing and Tokyo.⁷⁷ Petrie was given the title of vice-consul at the Shanghai Consulate-General as a cover. In Shanghai he worked closely with Fraser and Assistant Superintendent Barrett in particular to take action against Indians thought to be associated with the Ghadar Party.⁷⁸ This work would continue for a time after the war under Petrie's successor, Godfrey Denham, also an Indian police detective, and Petrie would leave

⁷⁴ IOR: L/PJ/6/377, File 1249, military despatch from the Secretary of State for India, no. 38 of 12 April 1894.

⁷⁵ TNA FO 228/3050: FO to Palairret, 28 April 1925.

⁷⁶ For the latter event, see Tim Harper, 'Singapore, 1915, and the Birth of the Asian Underground', *Modern Asian Studies*, 47, 6 (2013), 1782–811.

⁷⁷ TNA FO 228/2702: Jordan to FO, 11 August 1916.

⁷⁸ For a detailed description of Petrie's activities within the context of British Indian intelligence efforts against subversion see Richard James Popplewell, *Intelligence and Imperial Defence: British Intelligence and the Defence of the Indian Empire, 1904-1924* (London, 1995), especially pp. 258–296.

a further legacy when he left in 1919 by recruiting William Beatty from the Indian police to be assistant superintendent in the SMP, who brought with him 50 new recruits for the 'Sikh Branch' from India.⁷⁹

The new powers provided for the minister by the OIC of 1917 were used to deport large numbers of Indians suspected of sedition. The order meant that it was possible for the minister to certify that an individual should be immediately deported, without the chance to give security, if there were 'reasonable grounds for believing that any British subject has acted, is acting, or is about to act in a manner prejudicial to the public safety, or to the defence, peace, or security of His Majesty's Dominions or of any part of them.'⁸⁰ It also provided for other lighter punishments, but it seems that it was the more extreme power of deportation which was most used. Petrie drew on information from Barrett of the SMP in particular in compiling lists of men who should be deported, sometimes on very flimsy evidence, which in some cases showed little or no revolutionary activity – the chance to clear out some of Shanghai's Indian 'bad characters' was clearly seized by Barrett. For example, details such as 'very quarrelsome and truculent' were included to try to stiffen the report on Santa Singh, a former member of the SMP and 'station Granthi' (priest) dismissed in 1914.⁸¹ The lists were sent, with details of the reasons for deportation, to the minister, who then issued certificates to the judge, who was not expected to look beyond the certificates and was supposed to merely give effect to the minister's decision. On occasion, the judge did express doubts as to the justice of deportations under the OIC, but Petrie's arguments, which included in one telegram the statement that 'we regard new order as preventive as well as punitive', tended to prevail.⁸² British officials in China had in much earlier times, faced with different challenges, sought the power to deport as an executive act. As described in chapter two, in 1860, faced with problems arising from the presence of large numbers of Europeans with no

⁷⁹ Denham - Popplewell, *Intelligence and Imperial Defence*, p. 326. Beatty – FO 671/446: Pearce to Fraser, 14 May 1919.

⁸⁰ *BaFSP*, vol. 111, 1917-1918, pp. 20-1.

⁸¹ TNA FO 228/2704: Petrie to Alston 5 June 1917 and minute of 12 June 1917 thereon (unknown writer).

⁸² TNA FO 656/142: de Sausmarez to Alston (Chargé d'Affaires), 7 July 1917 and de Sausmarez to Alston, 2 August 1917; TNA FO 228/2704: Petrie (telegram) to Alston, 15 June 1917.

ostensible means of livelihood, Minister Bruce had sought similar extended powers to deport British subjects at his own discretion, but had been denied them following advice from the law officers.⁸³ After the war, in 1920, the minister's powers were removed, and deportations were once more placed fully in the hands of the courts, but printing and publishing 'seditious matter' was made an offence, punishable by deportation.⁸⁴ By contrast, in the same year, the governor of Hong Kong decided he should be able to deport 'undesirable' Indians without reference to the court, a move which drew opposition from the Indian Government, and which demonstrated the unevenness of British approaches to rights and freedoms in different colonial spaces.⁸⁵

No further king's regulations or OICs were issued after 1920 to deal specifically with Indians in China. The SMC and the British state remained bound together in a particularly close relationship through the policing and control of Indians, perhaps more so than in any other area. This was particularly evident in steps taken to deport Indians, and this continued after the war. When Mit Singh returned from deportation in 1924, Consul-General Sidney Barton reported that he had 'advised the Municipal Police to prosecute Mit Singh', who was duly prosecuted in the Police Court and sentenced to redeportation.⁸⁶ One might expect that deportation of British subjects from China, where no new disturbance or crime needed to be dealt with, would be the business of the state, rather than the municipal police, but in practice the line between the state and the SMP was blurred and the latter's interconnections with the British state were very strong. Intelligence activities of the British state continued to work in alignment with the SMP against Indian nationalism in the 1920s, and Indians continued to be deported in large numbers – 51 Indians were deported from China between 1912 and 1924 (in the same period, the total number of other British subjects deported was only six).⁸⁷

⁸³ TNA FO 83/2251: Law Officers to FO, 8 Nov 1860.

⁸⁴ 'Order in Council making provision for the deportation of certain offenders', 21 December 1920, in *BaFSP*, vol. 113 (London, 1920), pp. 229-30.

⁸⁵ FO 228/3413: India Office to CO, 13 November 1922, CO to FO, 5 December 1922.

⁸⁶ TNA FO 228/3100: Barton to Macleay, 14 August 1924; 'Indian Deportee's Return', *NCH*, 30 August 1924, p. 345.

⁸⁷ BL IOR/L/PJ/6/1890, file 3823: Legation to India Office, 'List of persons deported from China since 1912,' 30 Dec 1924.

The Indian government retreated from an active role for a time and indeed was criticised for not doing enough to prevent Indians returning from deportation after the war. As one Legation official put it, 'This is typical of India who are apt to wash their hands of these Indian undesirables in China, though they can of course be very embarrassing and dangerous in their activities here.'⁸⁸ In 1922 the Government of India turned down a request for Beatty's secondment to the SMC to be extended, despite appeals from the FO, and in 1923 it withdrew its funding for intelligence work in China, so that Denham was not replaced when he left Shanghai that year.⁸⁹ Intelligence was left in the hands of London-funded agents until 1927, when an officer from the Punjab Police, Colonel G. H. R. Halland, was sent to be attached to the Shanghai Defence Force as tensions built with the rise of the Guomindang in China and Indians were suspected of linking up with Communist agents.⁹⁰ Indian official commitment to British governance in China was intermittent and generally unenthusiastic.

Indians in China and British law in practice

Despite the added regulatory machinery which was introduced to control Indians under the circumstances described above, Indians who were involved in legal proceedings in China were still in principle dealt with under the same laws and regulations which applied to all British subjects, and in the same courts. Another response to the question of how to exercise control over 'martial' British Indians can be discovered in the everyday practices of the British courts, especially the Police and Supreme Courts at Shanghai. Indians appeared frequently in British courts in China in cases involving a range of criminal and civil matters. A detailed reading of the case reports, together with archival records which exist in connection with some more serious cases, reveals certain distinct attitudes and practices in relation to Indians involved in legal proceedings. Indians were treated in particular ways in China, based to a large extent on ideologies and beliefs about

⁸⁸ TNA FO 228/3100: minute by W. H. Turner, no date (1924), on Giles to Macleay, 26 June 1924.

⁸⁹ IOR L/PJ/6/1806: telegram from Viceroy, Simla to India Office, 7 June 1922, and FO to India Office, 8 May 1922; Keith Jeffery, *MI6: The History of the Secret Intelligence Service, 1909-1949*, (London, 2010), p. 257.

⁹⁰ Jeffery, *MI6*; TNA: FO 228/3589 telegram from Colonial Office to Governors of the Straits Settlements and Hong Kong, 24 February 1927, enclosed in FO to Lampson, 9 March 1927; memo by Halland enclosed in Lampson (telegram) to FO, 19 June 1927.

the nature of Indians which were widely held by British officials at the time, and the practice of law in particular played a key role in keeping 'martial' Indians in their place within colonial hierarchies in China.

As has been shown in earlier chapters, British officials held race-based ideas of group membership which resulted in unevenness in the treatment of British subjects. Judges' attitudes and practices towards 'martial' Indians were undoubtedly influenced by ideas – in particular based on racial and cultural essences – concerning the supposed nature of Indians. The positive attributes of 'martial' Indians and the ways in which they were thus thought to be useful to British rule have been well documented in the works on martial race theory referred to above, but negative cultural and racial characteristics were also ascribed to this group and were discernible in official discourse on Indians in China. 'Experts' brought in from India from time to time, were always ready to share their knowledge with British officials and employers of Indians in China. Major Davidson, of the Indian Army, hired by the SMC in 1910 to enquire into the reasons for disaffection in the Sikh Branch of the SMP, reported that 'The Sikh is a born intriguer; given suitable conditions, and I think he has them here, intrigue will flourish'.⁹¹ Petrie, originally from the Indian police, shared his opinion on the nature of Sikhs in a 1918 despatch to Consul-General Fraser, when he stated 'The ordinary Sikhs employed in the Police are still but little removed from children in their outlook and their mode of thinking'.⁹² The perceived capabilities of Sikh policemen were publicly described by the captain superintendent of the SMP in the SMC's *Annual Report* for 1906: 'their lack of intelligence does not permit of their being utilized in the finer spheres of police work.'⁹³

Certain aspects of the way that judges dealt with Indians who came before them show that a particular politics of difference, most likely informed in part by the 'experts' referred to above, was clearly at work in the handling of 'martial' Indians in legal cases. Judges frequently adopted a lecturing tone, addressing the

⁹¹ SMA SMP Central Registry Files U102-5-159: 'Report on the condition of the Sikh Police employed by the Shanghai Municipality', Major S. R. Davidson, 28 December 1910.

⁹² TNA FO 671/446: Petrie to Fraser, 3 December 1918.

⁹³ SMC, *Annual Report for 1906*, p. 13.

perceived deficiencies of Indians, especially Sikhs, in China. The statement quoted at the beginning of this chapter – ‘If there were to be Sikhs in China they must be good Sikhs’ – suggests that Sikhs were viewed by judges as a group whose presence in China was contingent on the permission of their British rulers. Part of the act of essentialising inherent in the politics of difference was a denial of the individuality of the subject, as judges showed when trying individuals or small numbers of Indians. In such cases, judges often spoke as if Sikhs or Indians were on trial *as a group*, and they frequently addressed the Sikh or Indian community as a whole when castigating behaviour they disapproved of. For example in 1909, Police Magistrate Gilbert King dealt with a fight between Indians which took place in the very public surroundings of the Shanghai Bund. It was reported in the *NCH* that he told the interpreter ‘to tell all the men in Court – and the room was crowded with Sikhs – that if that sort of thing went on, the Sikhs of Shanghai would have to be confined to a certain part of Shanghai.’⁹⁴ Harsh criticism from the bench was common, for example Acting Police Magistrate W. R. Strickland told the Indians in court in a case of assault in 1914, ‘It is disgraceful that you people should come here and waste the time of the Court by little lies of your own.’⁹⁵ Indians’ alleged willingness to lie in court was a frequent complaint made by judges, another supposed trait which was logically easily accommodated alongside the trope of the ‘childlike’ Indian.

Judges made clear efforts to increase the effect of court proceedings on Indians as a group. In 1906, when dealing with Indian SMP strikers, Judge de Sausmarez reported to Minister Jordan that it was he who personally persuaded the men to return to duty, by assuring them that their grievances would be listened to by the SMC, or by himself or the consul-general, if after one month they had behaved well in their work.⁹⁶ After court proceedings dealing with the alleged ringleaders ended, de Sausmarez addressed a group of about 150 strikers from the verandah of the consulate, and according to the press report, lectured them on camaraderie and obedience, before again assuring them that they would be listened to if they

⁹⁴ ‘Rex (S.M.P.) v. Dewa Singh, Surain Singh and Hazara Singh’, *NCH*, 25 September 1909, p. 745.

⁹⁵ ‘Mal Sing v. Lachman Singh’, *NCH*, 28 March 1914, p. 972.

⁹⁶ TNA FO 656/106: de Sausmarez to Jordan, 2 October 1906.

worked for one month without any further trouble.⁹⁷ In his action, de Sausmarez discharged a function which went far beyond that of a purely judicial figure, showing a preparedness to meet particular circumstances – and the needs of the SMC and International Settlement – by adopting a flexible response.

When in 1909 de Sausmarez tried eleven Indian members of the SMP who were suspected of trying to procure their dismissal through various ‘insubordinate’ acts, a clear attempt was made to create a legal spectacle which would have maximum impact on Indians in the SMP. Attention was paid to the theatre of the courtroom – it was noted that all Indian policemen who could be spared from duty were in the court, providing the audience for the judge to address, and it was also, unusually, noted in the press report that de Sausmarez wore ‘the full robes of a judge presiding at a criminal trial’, presumably to try to endow him with greater authority. Near the end of the hearing, a lecture was delivered to all Sikhs in court, who were ordered to stand up to hear it. The judge deployed stereotypes of Sikh characteristics by emphasising honour and pride, saying to them ‘you have disgraced your character as Sikhs’, and he went on: ‘You choose, because you think that there is a little more money to be made, to go off to America and to disregard your honour and your word.’⁹⁸ British judges clearly believed that a pedagogical-theatrical approach could have an effect on ‘childlike’ Indians, and they were ready to adapt their proceedings and their language in this way, to reinforce the colonial hierarchy in Shanghai, and in particular to assist the SMC with discipline over its Indian employees. In 1910, at least eighty men refused to leave when ordered to dismiss following a parade, claiming that they had grievances which they wished to raise with Bruce, the captain superintendent of police, and the British judicial system was once more mobilised to deal with these men. Eighty of the men who were identified as being involved were taken to the British consular gaol and held there until their trial in the Police Court under the king’s regulations. In the court they were lectured by both the British magistrate (Gilbert King) and the SMP

⁹⁷ ‘The Sikhs in Shanghai’, *The Times of India*, 3 November 1906.

⁹⁸ ‘Rex v. Narain Singh, Jhanda Singh, Hazara Singh, Bhan Singh, Puran Singh, Phuman Singh, Jagat Singh, Hazara Singh, Amar Singh, Surain Singh, and Nadan Singh’, *NCH*, 23 October 1909, pp. 185-7.

captain superintendent.⁹⁹ The British state supported the SMC in dealing with this trouble and the SMC's employee, the captain superintendent, was allowed to act in court as an official within the state legal hierarchy; from the perspective of the Indians in court, there can have seemed to have been little difference between their employers (the SMC) and the British state.

A consideration of the exercise in practice of deportation laws gives further evidence of the way in which differentiation between British subjects was effected, within an ostensibly universal legal framework, in ways which highlight the need to view law as a performative resource rather than a collection of rules and principles. As noted above, many more Indians were deported from China than other British subjects. Until the 1916 China (War Powers) Order in Council was passed, the deportation provisions (except in the case of serious offences) provided that a person before the court had the option to provide adequate security to ensure their future good behaviour; only if that was not found would the subject then be deported.¹⁰⁰ It was often the case that Indians thought to be involved in sedition could only be convicted of a minor offence such as a breach of the peace, in which case the court could only deport them on a first offence if they failed to provide security. When in 1915 the concern was raised that many Indians involved in sedition could get hold of sufficient sums to provide security and thus avoid deportation, de Sausmarez explained that finding security was not easy since it was not merely a question of obtaining enough money but also one of 'finding respectable people approved by court to go bail.'¹⁰¹ In this way, the court was able to order deportation on the basis of a subjective judgment and thus a flexible criterion of who was sufficiently 'respectable'.

As well as being the most often deported, Indians were without doubt subjected to capital punishment more than any other group of British subjects.¹⁰² Of itself, this fact does not necessarily reveal much about the treatment of Indians by British

⁹⁹ 'Rex (S.M.P.) v. Twenty Indian Police Constables', *NCH*, 29 July 1910, p. 275.

¹⁰⁰ See for example Article 83 of the 1904 OIC.

¹⁰¹ TNA FO 228/2299: telegram from de Sausmarez to minister, 4 November 1915.

¹⁰² A survey of FO archive files between 1905 and 1915 suggests that in that period, four Indian British subjects were executed. Only one non-Indian British subject was executed.

officials. There is no doubt that over the years a substantial number of Indians killed other people, usually also Indians, in China, often in the course of personal disagreements, what was described as 'factional' infighting, and especially disputes over Indian nationalist causes. But Indians were sometimes found guilty and punished for serious crimes on very thin evidence indeed. In 1905, early on in his role as judge of the SCC, de Sausmarez sat in a case involving the murder of a watchman in which three Indians were jointly accused of the crime. The men were all found guilty by the jury, based on evidence described by the judge as 'almost entirely circumstantial', and all three were sentenced to death.¹⁰³ However, as with all capital sentences, under the OIC, the sentence had to be confirmed by the minister before it could be carried out. It was de Sausmarez's duty to write to the minister, giving some advice or comment which might assist in making the decision. This the judge did on 14 July 1905, writing that he could see no reason for mitigation of the sentence of death in the case of any of the men. Later the same day, however, de Sausmarez wrote a second letter to the minister, containing different advice. He explained that both the crown advocate and the defending lawyer had written notes to him suggesting that the jury had wrongly convicted one of the men, Verdava Singh. De Sausmarez now declared himself persuaded that the verdict in that case was 'not strictly justified by the evidence', and that the verdict of guilt against Verdava had in fact surprised him. He therefore recommended commuting the sentence in that one case to imprisonment.¹⁰⁴ Minister Satow was initially persuaded to follow de Sausmarez's new advice, but a further intervention was then made in the case, by Registrar and Acting Judge John Douglas. Douglas, writing with de Sausmarez's permission, explained that he had conducted the case himself (he was magistrate when the case came before the Police Court) and reported that the police Inspector handling the investigation (an SMC employee) had consulted him and kept him informed of developments in the case. Douglas went on to state that the verdict of the jury should not be altered because of the lack of assistance which had been given to the police by Indians who were thought to know the identity of the murderers and because 'the attitude of the Indian community after the trial is a matter of considerable importance'. He

¹⁰³ TNA FO 656/106: de Sausmarez to Satow (first letter), 14 July 1905.

¹⁰⁴ TNA FO 656/106: de Sausmarez to Satow (second letter), 14 July 1905.

enclosed correspondence he had had with de Sausmarez, which revealed that SMP Captain Superintendent Boisragon had impressed on Douglas the importance of going through with the sentence on all three men and that it was believed that the Indian community were 'perfectly satisfied with the correctness of the verdict'. Douglas stated that 'the value of the conviction will be seriously impaired by the one man having his sentence commuted.'¹⁰⁵ The sentences of all three men were confirmed and they were hanged in the Shanghai Gaol.¹⁰⁶ The judges and the minister were prepared to hang a man in the absence of evidence proving his guilt, in order to send out a message to Indians in Shanghai that criminality would be met with a harsh response. It is difficult to understand their actions except in the light of who that man was – a poor, uneducated, Indian watchman. Only in the case of such a marginal figure would policy objectives outweigh legal norms with such a drastic result. The SMC and British court officials' insistence on the need to discipline Indians in general overrode any individual right to justice in the case of Verdava Singh, even though the penalty he faced was the ultimate one.

Court practices in relation to Sikh Indians were significantly different from those applied in cases involving other British subjects, because the gurdwara was frequently given a quasi-official role in British legal proceedings between Sikhs. The first gurdwara in Shanghai was opened in 1903 in the Hongkou district in a temporary building.¹⁰⁷ Subsequently, the SMC contributed land and part of the funding for the building of a new gurdwara which opened in 1908, the opening ceremony being attended by the Chairman of the SMC and the British chief judge, Havilland de Sausmarez.¹⁰⁸ A gurdwara for the use of policemen was opened by the SMC at Gordon Road Police Station in 1916, in order to try to eliminate conflict between police and watchmen over the running of the older gurdwara.¹⁰⁹ British officials and senior representatives of the SMC took a close interest in gurdwara affairs, and at times promoted, supported and collaborated with the committees and priests (*granthis*) of gurdwaras with a view to bolstering the loyalty and

¹⁰⁵ TNA FO 228/1585: Douglas to Satow, 29 July 1905.

¹⁰⁶ TNA FO 656/106: Bourne to Satow, 16 August 1905.

¹⁰⁷ 'The Shanghai Singh-Sabha', *NCH*, 24 November 1905, p. 456.

¹⁰⁸ 'The Sikh Gurdwara', *NCH*, 16 August 1907, p. 386.

¹⁰⁹ SMC *Annual Report*, 1915, p. 24A.

discipline of Sikh adherents. The granthi for the gurdwara which opened in 1908 was on the payroll of the SMC, and later that year it was reported that 'his influence for good is already making itself felt.'¹¹⁰ However, the following year, the SMC's Watch Committee reported that 'the controlling effect of the gurdwara is not as great as was anticipated.'¹¹¹ When the Gordon Road gurdwara was opened in 1916 a further granthi was employed by the SMC.¹¹² In this way, the SMC and British officials were following the same practices undertaken in the Indian Army, where it has been well documented that Sikhism was made use of through its institutions as a force for promoting habits and behaviour desirable to the British among Sikh soldiers.¹¹³ There are numerous examples from court reports in China of judges turning cases over to the gurdwara personnel to resolve. There was no provision in the OICs or any regulation for the involvement of the gurdwara in deciding legal hearings, so it seems that the judges adjusted their practice of the law on their own initiative. In 1908, Assistant Judge Frederick Bourne heard a debt case involving Man Singh and Bela Singh, in which each party claimed that the other owed him money.¹¹⁴ Bourne 'ordered the parties to refer the matter to the Granthi' and adjourned the case for one week. When the case was resumed, the granthi was called for, and following a lecture by the judge about the readiness of Sikhs to commit perjury despite having sworn on their 'sacred books', the granthi was asked to arbitrate in the dispute.¹¹⁵

A further debt case was referred to the gurdwara by Bourne in 1912, but this time the judge was not satisfied with the standard of justice which was on offer. He explained why he had asked the gurdwara to intervene:

When I heard this case, and after hearing the evidence, I made up my mind that I ought to give judgement for the defendant, but it seemed to me that I might not understand Indian custom sufficiently to do justice between the parties as efficiently as would be done by the gurdwara,

¹¹⁰ 'Municipal Budget, 1908', p. 11, appendix to *SMC Annual Report*, 1907.

¹¹¹ *Minutes of the SMC*, vol. 17, 6 October 1909, p. 123.

¹¹² *SMC Annual Report*, 1916, p. 90C.

¹¹³ Ballantyne, *Between Colonialism and Diaspora*, p. 66.

¹¹⁴ 'Man Singh v. Bela Singh', *NCH*, 3 Jan 1908, p. 28. Cases involving debts owed to Indian moneylenders (usually, but not always, by other Indians) were very common.

¹¹⁵ 'Man Singh v. Bela Singh', *NCH* 10 Jan 1908, pp. 84-5.

where I understand that matters in litigation are tried by juries of the men's own country, who understand the customs better than I.¹¹⁶ In this case, the parties were said to have agreed to the gurdwara being asked to settle the matter, but the judge explained why this solution was in the end not satisfactory to him: 'Some time passed and I inquired from the Captain Superintendent what conclusion the gurdwara had come to, and it appears that all they did was to draw lots as to which of the parties was in the right.'¹¹⁷ It might be expected that such a revelation would put a stop to farming out part of the administration of justice to the gurdwara, but it seems that it did not.

Most of the cases which the gurdwara officials were invited to preside over or participate in were civil cases. However in 1908 Judge Bourne, sitting in the Police Court, heard a case in which Jawalla Singh alleged that four Sikh men had assaulted him and adjourned it in order that the granthi could 'look into the matter'. Having done so, the granthi told the judge that the complainant was lying and asked the judge to punish Jawalla for taking a false oath. Jawalla's response was to try to assert his rights to British justice as a British subject, as the *NCH* reported: 'Complainant stated that the Granthi had nothing to do with the consulate and it would be better for his Worship to decide the case.' It was reported that the judge responded that 'he did not want complainant to tell him how to do his duty.' The judge found against Jawalla, and said he would refer the case to the crown advocate for a possible perjury prosecution. Among his final comments was reportedly the statement that 'The Sikh community had decided the matter and he was quite sure that justice was being done, and that complainant should be severely punished.'¹¹⁸ Jawalla was thus denied his rights as a British subject and subservience to the gurdwara was enforced by the British state in China.

Bourne was not the only judge to use the gurdwara as a forum for the settlement of legal disputes between Sikhs. In 1909 Motal Singh accused Isser Singh of stealing some silver items from him. Judge Gilbert King found that he could not be sure of

¹¹⁶ 'Mehar Singh v. Paratab Singh', *NCH*, 4 May 1912, p. 348.

¹¹⁷ 'Mehar Singh v. Paratab Singh', *NCH*, 4 May 1912, p. 348.

¹¹⁸ 'Jawalla Singh v. Hernam Singh, Mall Singh, Norain Singh and Goordat Singh', *NCH*, 6 March 1908, p. 568.

Isser Singh's guilt, so discharged him, but then reported the case to Captain Barrett of the SMP 'so that it might be inquired into at the gurdwara', thereby effectively handing the case to the gurdwara as an alternative legal forum.¹¹⁹ That this course of action involved the SMP officer responsible for the Sikh Branch, is also significant, showing how the court worked closely with the SMP. In 1926, King officiated in a debt case between two Sikhs, in which the 'Sikh community' had already given its judgment. It was reported that the judge upheld the decision exactly as it had been made by the two parties' 'fellow-countrymen' at the gurdwara.¹²⁰ It is not certain why some cases and not others were referred to the gurdwara. It does seem that frequently this course of action was taken in cases where the evidence of the parties was conflicting and it appeared that one was committing perjury. Passing the case to the gurdwara must have been an appealing course of action in such circumstances, where the frustration of judges was sometimes evident. The fact that nearly all cases involving Indians would have required interpreters must also have made the cases more tiresome. The involvement of the gurdwara may also have been connected with a wish to remain aloof from Indians and their disputes, a phenomenon which Jonathan Saha has described among British officials in Burma.¹²¹ The way the gurdwara was resorted to by British judges is clear evidence that judges based their approach to Sikhs in their courts on general understandings of the proper means to govern non-European colonial subjects elsewhere in the world, incorporating the widespread view that British law could not be universally applied in view of the importance of maintaining the customs and traditions of the colonised. Their approach was no doubt also heavily influenced by the understanding that SMC control over Sikhs in Shanghai was, in line with practices in the Indian Army, in part effected through the gurdwara and its officials.

Metcalf and others have described how the British in India grappled with universalising ideals of rule of law at the same time as they were convinced that local people required custom and tradition to structure their societies and ensure

¹¹⁹ 'Motal Singh v. Isser Singh', *NCH*, 26 June 1909, pp. 747-8.

¹²⁰ 'Missing Promissory Note', *NCH*, 20 February 1926.

¹²¹ Jonathan Saha, 'A Mockery of Justice? Colonial Law, the Everyday State and Village Politics in the Burma Delta, C. 1890-1910', *Past & Present*, 217, 1 (2012), 187-212, p. 211.

stability.¹²² Judge de Sausmarez was clearly very attached to certain fundamental British legal principles, illustrated by his efforts to defend the separation of powers and maintain a judiciary independent of the executive against calls for greater deportation powers. But, judging from his handling of the murder case referred to above, and the practices of his junior colleagues while he was chief judge, these British officials in China were not attached to universal principles which would give Indians as individual British subjects the same treatment as European Britons. When the judges intervened in the governance of 'martial' Indians in China, it is difficult to ascertain the extent to which they were deliberately importing their understanding of specifically Indian legal procedures into their courtrooms, but it seems likely that, although none had professional experience of law in India, at least vague notions of the Indian legal system would have been known to them. At times, judges attempted to follow procedures and courtroom etiquette as they were understood to be practised in India. In a murder case in 1907, Judge de Sausmarez ordered that Indians watching the trial should not bring sticks into the courtroom, since this 'was looked upon in India as a mark of disrespect and should not be allowed here.'¹²³ It was clear from the case decided by Bourne in 1912 referred to above that 'custom' played an important role in his thinking.

The judges' use of the gurdwara was, it seems, an improvised response based less on a particular model of legal practice from India or elsewhere, and more on general ideas about governing colonial subjects and in particular the importance of religion in structuring the lives of Sikhs, and especially 'good Sikhs'. Religious observance was thought to be an essential component of the ideal Sikh, so it is not surprising that officials should support the gurdwaras and acknowledge and underpin their authority. As stated earlier, the SMC supported gurdwaras in Shanghai and incorporated these bodies into their structures in order to use them in the control and discipline of the Sikh policemen they employed. British judges' attitudes and practices in relation to the gurdwara dovetailed with the SMC's

¹²² Metcalf, *Imperial Connections*, p. 17; Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton, N.J., 1996).

¹²³ 'Rex v. Varyam Singh alias Surjen Singh', *NCH*, 15 Nov 1907, p. 416. De Sausmarez had family connections with India, including through his uncle George de Sausmarez who was a general in the Indian Army. These connections may perhaps have informed his view of Indian cultural practices.

approach, by giving the gurdwara additional power and authority over Sikhs in Shanghai. The court was also ready to play a role in a performance of state power targeting 'martial' Indians, by adapting practices and indeed selectively applying British law and procedures to their cases. All of these practices assisted the SMC in its management of its employees and in policing the Shanghai International Settlement, and this was therefore another key way in which British officials in China facilitated and bolstered the governance of this particular, and peculiar, imperial formation.

Conclusion

My chief aim in this chapter has been to try to explain in more detail how – through what processes and with what results – the migration of Indians, and the state's response thereto, influenced British expansion and the development of the treaty ports. It is clear that there were two main consequences for the British state's presence in China. First, the main institutions involved in the state's project of governance over British subjects in China, the minister, consuls and courts, worked together to supplement their regulatory repertoire in order to meet the challenges they believed Indians created for British governance. Second, they did this in a way which was most often designed to support the Shanghai Municipal Council, the main non-military employer of Indian manpower in China. This was perhaps the area of work, out of all their activities in China, where British officials and SMC employees collaborated most closely of all. The SMC needed Indians, or at least thought it needed them, because of its peculiar status as the British-dominated governing authority of a large and commercially-important city, inhabited by several thousand foreigners and hundreds of thousands of Chinese by the early twentieth-century. The SMC's decision to employ large numbers of Indians clearly led to an increased level of activity and deployment of resources on the part of the British state in China, and thus influenced the development of British governance in China.

The presence of Indians in large numbers in the SMP, and the way they were jointly managed by the SMC and British state institutions, clearly influenced the

implementation of policing at the International Settlement at Shanghai. This had implications both for the institutions built at that place and also the lived experience of Shanghai residents who encountered Indian police in their everyday lives, much as British colonial subjects in Britain's colonies at Hong Kong and elsewhere in Southeast Asia did. The actions of the British state therefore contributed in a significant way to the creation of Shanghai, and to a lesser extent other British concessions where Indian police were deployed, as sites where colonial relations were enacted and experienced.

The migration of Indians to China led also to increased, but surprisingly limited, activity in, and direction of resources to, China on the part of the government of India. The latter rarely tried to assert influence over British governance in China. When India sent Petrie and then Denham to Shanghai between 1916 and 1923 this was done following repeated requests from consuls and diplomats in East Asia for assistance and only because the Government of India was concerned about the ultimate effects in India of rebellious activities taking place in China and elsewhere. Rather than being a projection of power outwards from India, their presence was very much the continuation of the pattern in other areas, whereby demands for resources were made on India, to pay, to provide guidance, to provide personnel. Given this picture, if we are to use China as an example of Indian 'subempire', we cannot understand the latter term as suggesting an expansionist impulse emanating from the Government of India, at least if our focus is the migration of Indians to China.

We can however see that when Indians migrated to China, and as a result sometimes appeared in British courts in China, certain ideas and practices seemed to accompany them. Indians in China were not freed from the experience of colonial difference which was a feature of Indian everyday experience in India. They found themselves in a milieu in which the essentialist views described in this chapter, in particular in connection with Sikhs, determined the way those in authority treated them. It would be more precise to say that the ideas and practices travelled to China separately from Indians themselves of course – they came with British officials in their thoughts and convictions, whether those

officials came direct from Great Britain, or after colonial experience elsewhere – but these ideas and practices were clearly activated when, for example, an Indian stood before a British judge in the dock at the Shanghai British court, and was sentenced to death based on circumstantial evidence. Contrary to the rhetoric of officials and despite the constraints of its basis in domestic rather than Indian colonial law, British law as practised in Shanghai was constitutive of a hybrid colonial state, with its own set of governmental priorities, in which ‘martial’ Indians were highly marginalised and subjected to heavy and harsh discipline.

Conclusion

At the most fundamental level, this thesis has been an exercise in writing institutions, processes and practices of the British state into the internationalised history of China. The British state created substantial structures and engaged in a range of practices to implement consular jurisdiction in China following the opening of the treaty ports in 1842. This thesis has demonstrated that the actions in terms of the structures and practices which were created and implemented by the state amounted to a project of governance which had significant consequences for the development of the treaty ports and for China-Britain relations in the period. These findings led me to question, especially in chapter one, the analytical framework which is based on the categories of formal and informal empire, which has often been deployed by scholars interested in British expansion in China. This research has shown that descriptions of empire or colonialism at the treaty ports as ‘nearly invisible’ or ‘restricted’, apparently based on a binary understanding which contrasts areas classed as ‘formal’ and ‘informal’ empire, reflect assumptions about the nature of the treaty ports which do not accord with the evidence of the actual institutions, processes and practices which developed in those places.¹

In putting extraterritoriality into practice in the treaty ports, the British state did not simply withdraw rights from the Chinese state; it inhabited the space made by extraterritoriality by engaging in a range of practices and connections, which had consequences for the development of the treaty ports, especially Shanghai. How, in practice, did the state extend its governance in China? Overall, taking the findings of the thesis together, we can conclude that the state project of governance unfolded in response to the challenge of managing the diverse British population in a blended fashion: there was a whole range from planned, intentional expansion of structures at one end of the spectrum (often initiated by the FO and the minister) to incipient, and sometimes haphazard, ‘mission creep’ at the other. The history of the SCC, which was an institution central to the project of

¹ Darwin, *Unfinished Empire*, pp. 391-2; Goodman and Goodman, ‘Introduction’, in Goodman and Goodman (eds.), *Twentieth Century Colonialism and China*, p. 2.

governance described in this thesis, can provide examples of both kinds of processes. It was founded in the 1860s through a mostly London-led procedure, described in chapter one, in which the law officers were consulted, and experience in the Ottoman Empire was heavily drawn upon. But it developed in response to situations unfolding at the treaty ports, especially Shanghai, often in ways which were led by figures at Shanghai, where it was based. For example, as I showed in chapter two, the chief judge, Edmund Hornby, soon embedded himself within the Shanghai mercantile community, and worked to support the aims of the Shanghai Municipal Council (SMC) in ways which did not align with the policy of the then minister, Rutherford Alcock. In chapter five I then showed how, in the early twentieth century, after the SMC had recruited 'martial' Indians to form a key part of its security apparatus, the British court responded to deal with these new circumstances. Some of the key means by which the court moved to meet the specific local conditions were informal adaptations of procedures and interventions which had no basis in law.

The key means by which I have illuminated the state's role has been through a focus on the governance of marginal British subjects in China. This thesis has shown that the development of the British state's structures and practices in China was influenced to a considerable extent by the perceived need to respond to the presence and activities of marginal groups. In chapter two I showed that the need to discipline and control British seafarers was recognised from the opening of the first five ports in the 1840s, but further challenges presented by groups such as 'the rowdy class' led to the foundation of the most important institution for governance, the Supreme Court for China (SCC) at Shanghai. Chapter three described how specific policies and practices were also deployed in relation to Chinese British subjects, with clear implications for relations with Chinese state authorities as well as British colonial governments elsewhere. Chapter four showed that the treatment of Eurasians represented an acknowledgment by the British state of the status of the treaty ports as sites of settler colonialism. This was done in ways not grounded in legal principle, but which were furthered through law as practised by British officials in the courts in China, both the SCC and the Mixed Court at Shanghai. The perceived need to discipline 'martial' Indians in

China led to significant additions and reforms to the British machinery of governance, described in chapter five, again including methods not provided for under legal statutes or established principles. The chapters on marginal subjects at the treaty ports have all allowed for a sustained focus on the everyday practices of the state, in particular the role of the courts. They have shown how colonial relations, in the enactment of which the British state was an important force, shaped the Chinese treaty ports, both as part of the British settler world, and also as colonised zones inhabited by Chinese and others.

The British state therefore played a role in China-Britain relations as they unfolded on the ground, in the everyday colonial life of the major treaty ports. It did so in conjunction with certain other formations, some of which have been more thoroughly researched, for example the SMC and the customs. My findings thus complement work by others who have examined the history of foreign involvement in nineteenth- and early twentieth-century China within a wider colonial context, including the extensive work of Robert Bickers on the treaty ports, James Hevia's *English Lessons*, Jackson's work on the SMC, Catherine Ladds' research on the customs, and Pär Cassel's writing on extraterritoriality.² This growing body of work which has explored Sino-foreign interactions in the treaty century has often described foreign and Chinese everyday lived experiences at the treaty ports but there has generally been little attention given to the British state's practices of governance in China; this thesis addresses that shortcoming.

Among the most significant of the contributions made by this thesis, is the finding that British state expansion led to the intertwining of the British state and the SMC, leading to a deep interconnectedness at an institutional level which has not been sufficiently recognised or described. This thesis has therefore made a specific contribution to our knowledge about the development and operation of governance at Shanghai, arguably China's most important city from the mid-nineteenth century. Isabella Jackson, in the most comprehensive survey written of

² See Bickers', *Britain in China* and *Empire Made Me* as well other books and articles; Hevia, *English Lessons*; Jackson, *Shaping Modern Shanghai: Colonialism in China's Global City*, Ladds, *Empire Careers*; Cassel, *Grounds of Judgment*.

the SMC, states that 'from the days of the Taiping Rebellion (1850-1864), the Council's driving concern was the protection of life and property.'³ As shown in chapters one, two and five, it was in those two key areas that British officials and institutions, especially the courts and court officials, were crucial to the functioning of the International Settlement. The SMC relied on the British state to the extent that I argue that it was in effect a hybrid colonial state which governed the Shanghai International Settlement; an assemblage in which SMC personnel and British state agents and institutions were the primary actors.⁴ Although there was no name for this assemblage, so that its outlines are difficult to trace and its influence is not always in plain view, its agency cannot be doubted. The SMC could not govern Shanghai's International Settlement alone and any attempt to account fully for the governance of the Settlement must incorporate a role for the British state. British state institutions based in Shanghai supported the work of the Council from the very first years of the existence of the International Settlement, often in ways which did not ultimately align well with the official British policy being promoted by the British ministers at Beijing in the 1860s. The supportive role in relation to the SMC continued over time and became embedded in a kind of taken-for-granted set of practices and relationships, focussed in particular around the key areas of policing and law. As demonstrated in chapter five, by the time the SMC was grappling with the problem of disciplining its Indian workforce, the British judge of the SCC automatically mobilised his resources – not least his position in a hierarchy of British authority – to assist the SMC. The way that the court adapted clearly represented a response to the requirements of the SMC, with the British court personnel and officers of the council working together as though they were part of a single authority. The degree of autonomy enjoyed by the British court facilitated its assistance of the SMC, and allowed the Council to develop its own apparently autonomous status. However, while the SMC was autonomous to a degree, it was not independent: it relied on the British state, especially the latter's local institutions, as well as military back-up, in key ways related to its essential functions in connection with the management of law, land

³ Isabella Jackson, *Shaping Modern Shanghai*, pp. 28-9.

⁴ The description of the modern state as an assemblage is taken from Patrick Joyce and Chandra Mukerji, 'The State of Things: State History and Theory Reconfigured', *Theory and Society*, 46, 1 (2017), 1-19.

and power.⁵ If, as John Comaroff has argued, ‘cultures of legality were constitutive of colonialism, tout court’, then the British state in partnership with the SMP was instrumental in bringing Shanghai as a colonial city into being.⁶

The British state’s role in China is best considered alongside existing work on imperial networks and the circulation of ideas and practices, and throughout this thesis I have brought to attention the existence and nature of connections along such networks which have not generally been visible in previous work. Chapters one, two, three and five all clarified the way in which imperial networks connected the treaty ports with Hong Kong, the Straits Settlements, India and the Ottoman Empire. Such connections developed through various transfers of people, ideas and practices, sometimes in unexpected ways, and with effects on China-Britain relations and the development of the treaty ports. Connections were made and unmade in the course of the development of the British project of governance. The colony of Hong Kong was initially envisaged as a territorial foothold which would service the needs of British interests in the newly-opened ports, and for that reason shared a government and legal system with the treaty ports. However, this arrangement was found to be inadequate to the task of delivering British aims for consular jurisdiction, and in chapters one and two I showed how connections between British governance at the treaty ports and Hong Kong colonial governance were severed in the legal and administrative domains. Chapter three, on Chinese British subjects, showed however that connections of another kind grew through the colony of Hong Kong’s interference in treaty port governance on behalf of Chinese British subjects, which influenced the direction of British expansion in China in 1904, when more Chinese British subjects were given British protection in China following pressure from the Hong Kong government.

Imperial connections with British India have already been described in the literature, and connections of certain kinds are indeed confirmed in the research

⁵ These were the key underpinnings of the treaty ports, according to Robert Bickers and Isabella Jackson: Robert Bickers and Isabella Jackson, ‘Introduction’, in Robert Bickers and Isabella Jackson (eds.), *Treaty Ports in Modern China: Law, Land and Power* (Abingdon, 2016), 1-22, p. 9.

⁶ Comaroff, ‘Colonialism, Culture, and the Law’, p. 309.

presented in this thesis, in particular in chapter five on ‘martial’ Indians.⁷ However, the case of British governance in China which I have presented here shows with greater clarity the nuances of those connections, which were strong in some areas but surprisingly weak in others. For example, in the area of institutional ties, neither the Government of India nor its court system were closely linked to their British counterparts in China. By contrast with the considerable political interference by the Government of India in polities situated to the west of India, in Persia and the Gulf, my research found only very weak interest in active involvement in the treaty ports, despite the commercial importance of the opium trade.⁸ Although British expansion relied on Indian manpower, the British Indian state projected itself very little into the treaty ports and had limited influence there. There was a transfer of ideas about Indians and of certain practices towards them from India to the treaty ports, but this was largely done outside formal structures – the Indian legal system was not drawn on to create the formal structures of British systems of governance in China, but instead more general ideas and practices were adopted. We may call this Indian influence subimperial, as some historians have done, but we should clarify what we mean by that term – specifically whether influence was ‘pushed’ outwards from an Indian centre, whether it was extracted by actors based in the treaty ports seeking to take advantage of what they saw as India’s useful resources, both physical and intellectual or cultural, or whether indeed ideas and practices were borrowed unreflectively or subconsciously.⁹

Imperial connectedness could be the source of tensions between different parts of the empire. For example, in chapter three I showed how the small colonies of Hong Kong and the Straits Settlements both sought to influence policy at the treaty ports, in support of their colonial subjects, based on a view of Britishness which fitted with colonial knowledge and suited imperial purposes in the colonies, while conflicting with the views of many officials based at the treaty ports and in Beijing.

⁷ Metcalf, *Imperial Connections*; Jackson, ‘The Raj on Nanjing Road’.

⁸ James Onley, ‘The Raj Reconsidered: British India’s Informal Empire and Spheres of Influence in Asia and Africa’, *Asian Affairs*, 40, 1 (2009), 44–62.

⁹ Metcalf and Jackson have both described the relationship as subimperial. Metcalf, *Imperial Connections*; Jackson, ‘The Raj on Nanjing Road’.

By this process the colonial governments of Hong Kong and the Straits Settlements intervened in the governance of British subjects in the treaty ports, and the divergent views this involvement revealed demonstrates the multipolar nature of the British empire: there was much more to British expansion than a metropole-colony model can allow for, and furthermore to understand the variation in British colonial governance we need to pay attention to the way that colonial knowledge varied and was applied differently in response to the problems of governance as they were perceived at different places. When thinking about the state as embedded in networks, and in considering the connections they were made up of, we need to keep in mind the nature of the state in the case of the British empire: a somewhat confused and diffuse collection of institutions concentrated in a variety of locations, connected in ways which did not always make up a coherent framework, and capable of holding multiple viewpoints and priorities. In this way divergent views even on such fundamental issues as the question of who should qualify as British and deserving of the full range of British rights were held at different places.

The analysis of state practices towards marginal groups has provided an insight into the nature of the treaty ports as colonial spaces. The British Eurasians in the treaty ports who were the focus of chapter four, by contrast with Chinese British subjects, had no colonial government to present arguments for or against their rights as British subjects in China. The closest thing that they had to such patronage was in fact parts of the British treaty port community itself, within which British consular officials and judges themselves also lived and worked. The recognition of Eurasians as British protected persons, even in cases where no legal claim to British status could be justified, but where the person in question had demonstrated enculturation as British at the treaty ports, was a recognition that the latter were sites in which it was possible to grow up as British. Moreover, the creation of a group of people whose ties to Britain depended on enculturation at treaty ports such as Shanghai represented an action taken by the British state which contributed towards the imagining of the treaty ports as colonial spaces distinct from Chinese territory. These seemingly trivial interventions by British officials in the personal lives of Eurasians at the treaty ports are significant

because they reveal the ways in which official actions could work at times in favour of the British settler society which grew up at Shanghai, and of a particular view held by the latter group of the status of the treaty ports as foreign spaces.

Although primarily focussed here on the British state's relationships to its own marginal subjects, my analysis of British governance, especially in chapter two, has also demonstrated that the way that consular jurisdiction was implemented by Britain in China affected the lived experiences of Chinese people at the treaty ports. The institution of the British court at Shanghai was a setting in which Chinese participants and witnesses in trials, and also readers of the Chinese press, could clearly experience the asymmetrical relations characteristic of colonialism, and cases which were controversial could have a significant impact, even beyond Shanghai. Similar effects to those highlighted by James Hevia, who has described the 'pedagogy of imperialism' in China, can be seen to have been produced, albeit through different processes.¹⁰ The use of Indians in municipal police forces has also been pointed to by earlier writers as evidence of the colonial trappings of everyday treaty port life, a state of affairs deliberately promoted by the SMC and clearly affecting the experience of residents of the treaty ports, foreign and Chinese.¹¹ Chinese at the treaty ports frequently experienced harsh treatment at the hands of Indian policemen and watchmen, who were chosen by imperial élites specifically for their suitability in meting out such treatment to the Chinese populations. This research has made clear that the British state played an important role in facilitating this state of affairs, and the effects it produced, especially in the way that the disciplining of Indians working in security roles was enabled through the specific policies and practices which were adopted to deal with them.

With the occasional exception, mostly in relation to marginal Europeans, the existing literature on foreign settlers and sojourners in China has done little more than refer to the existence of marginal colonisers in passing, to highlight the stratified nature of settler communities at the treaty ports and their similarity to

¹⁰ Hevia, *English Lessons*.

¹¹ Jackson, 'The Raj on Nanjing Road', pp. 1688-9.

other colonial sites across the British empire. The chapters in this thesis which deal with the different marginal groups have served to bring into greater focus the existence of these groups, as well as some details as to their nature and activities. In addition to this general contribution to historical knowledge, the thesis has further demonstrated that cultural factors, together with challenges inherent in the context of the treaty ports and British colonies, fed into the politics of difference which determined how these groups were handled by state actors. The state did a good deal of the work of managing difference which was an essential part of the maintenance of colonial space. That these processes, involving attempts at boundary maintenance, were important in Shanghai and the other treaty ports comes out in Robert Bickers' earlier work, but the role of the state in this process has not been analysed in any great detail. This role was particularly evident in the case of 'martial' Indians. This work also has broader implications for debates over the importance of the management of difference in empires more generally. It shows that the management of difference affected official practices in important ways, influenced by the specific circumstances of the treaty ports and their place within imperial networks, to produce the British official stance in relation to the different groups of colonial subjects and British marginal groups covered in this research. In short, the groups were managed in specific ways tied to cultural understandings of their identities and it is impossible to understand the British approach to governing them without an appreciation of the politics of difference.

The findings presented here suggest that we might more broadly incorporate the state into our considerations of the British presence in China. Other aspects of the British state's actions in China could fruitfully be investigated. For example, state policies and practices through the consulates and courts in supporting and facilitating the expansion of British commercial activities in China might provide further evidence for the importance of the state in the development of the treaty ports, which were all of course primarily intended as centres of trade. Such an analysis would most likely uncover another set of connections and networks linking the ports to other parts of the world, and other individuals, organisations and groups.

Further valuable work could also be conducted by investigating connections between consular officials (both British and other foreign officials), the SMC, other municipal councils and also the Customs service to interrogate the full range of actions undertaken by foreigners working within an 'official' mind-set on aspects of governance in China; despite working for different organisations, with different legal bases and not in most cases formally connected, it is likely that such research would find a good deal of connectedness and commonalities in terms of attitudes, practices and purposes between such agents and their organisations.

Another very useful undertaking would be to pursue comparative work on other areas where Britain implemented consular jurisdiction, for example the Ottoman Empire. Although Turan Kayaoglu has compared British 'legal imperialism' in China, Japan and the Ottoman Empire, his work is focussed on the principle of extraterritoriality in the context of international relations at the state to state level.¹² It does not investigate the implementation of consular jurisdiction in the two places as a set of practices which affected social relations on the ground. As this thesis has shown, such an approach can reveal a great deal about colonial expansion in places where territorial sovereignty was not fully displaced by a foreign power.

This thesis has made a strong case throughout its chapters for the importance of the role of the British state in the development of colonialism in China, in ways which have hitherto been overlooked or underemphasised. It has examined the British state's project of governance in China and connected it with the institutions, practices and culture which grew up in the Chinese treaty ports, a colonial world dominated by Britain. And it has given due weight, for the first time, to the roles played by British officials, through regulations, institutions and everyday practices, in creating, shaping and perpetuating this world. It suggests that the division of the world of empire along the lines of formal and informal can be misleading, by giving undue weight to locating formal sovereignty over territory, which is then often used as the starting point when framing our fields of research. This can

¹² Kayaoglu, *Legal Imperialism*.

easily allow us to overlook the complexity of colonial relations as they unfolded at various places around the world. This potential danger also applies to places which are classed as sites of formal empire, in which it is important not to overemphasise the role of the state and neglect the power of private agents. Instead of unquestioningly adopting a worldview emphasising sovereignty, we should examine sites of intensive connections, in which external powers inserted themselves, with an open mind, tracing processes and interactions to determine their effects, before classifying the nature of relations at a given place as colonial or otherwise.

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